

809

No. 2251

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit.

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MATSON NAVIGATION COMPANY

(a corporation),

*Appellant,*

VS.

UNITED ENGINEERING WORKS

(a corporation),

*Appellee.*

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## BRIEF FOR APPELLEE.

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NATHAN H. FRANK,

IRVING H. FRANK,

*Proctors for Appellee.*

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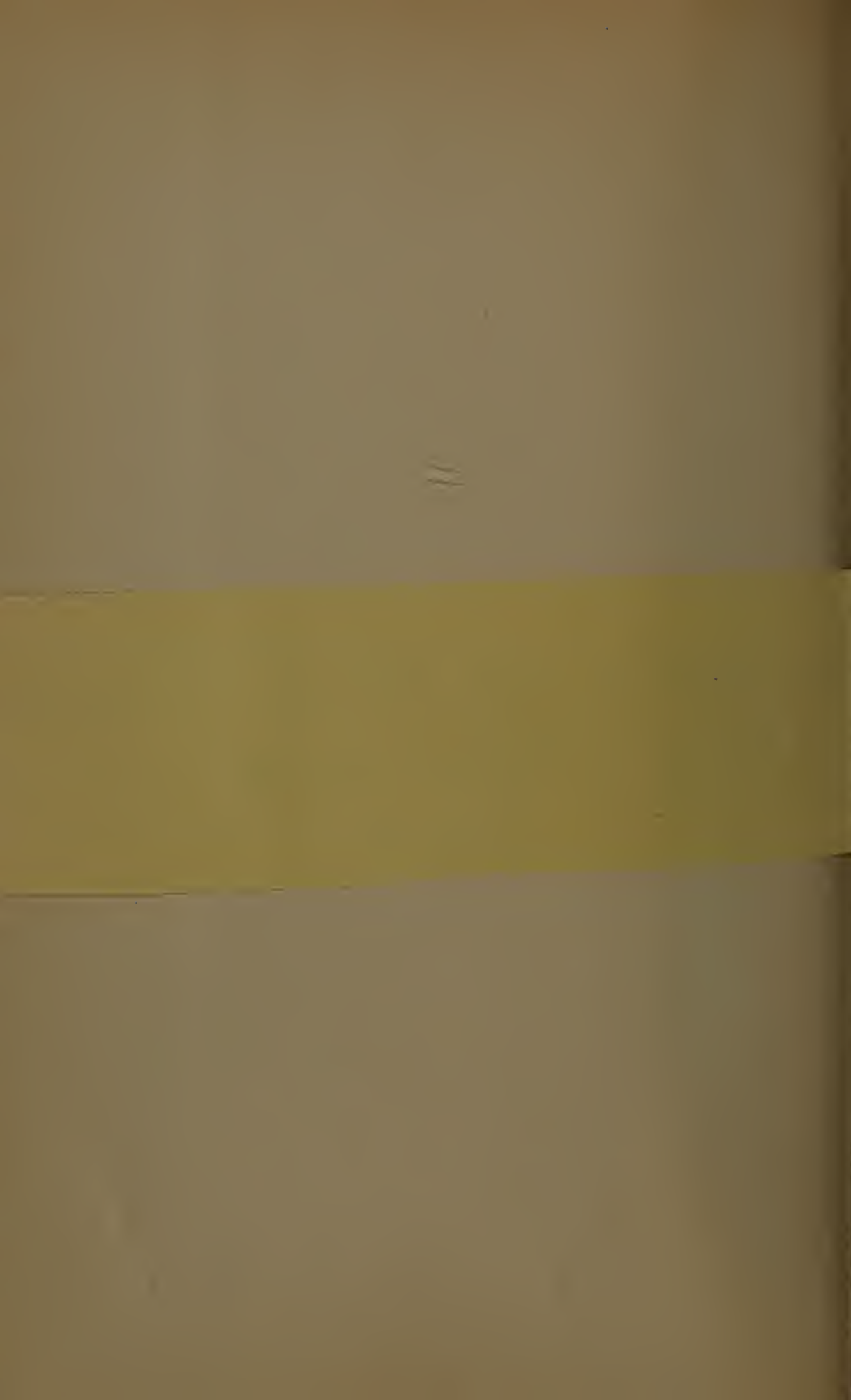
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In the discussion that follows, it shall be our endeavor to treat the subject calmly and to suppress the irritation that naturally arises from what we deem the unfair treatment of the facts of the case, coupled with insinuations, sneers and unfounded charges of misconduct, which seem to be the piece de resistance of respondent's defense.

Since there is no disputed question of law involved in the case, but our differences are entirely upon questions of fact, it follows that we cannot endorse appellant's statement of "Facts of the Case", which are rather a statement of some of its contentions, against which

there exists the presumption arising from the findings of the District Court.

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### **Facts of the Case.**

Since so much is said by appellant about the conduct of the parties and since its entire defense seems to rest upon a charge of overreaching, collusion and sharp practice, so distributed throughout a brief of over two hundred pages as to make it impossible, within reasonable limits, to follow him seriatim, we propose to give our version of the transactions connected with this controversy in as connected a form as possible. For convenience we will hereafter call the appellant the "Matson Co." and the appellee "the United".

To begin with, it will be borne in mind that the United is a large shipbuilding plant employing, in the shops and yards, between three hundred and four hundred men (pages 1496-7). It has work shops on both sides of the Bay of San Francisco, viz., at Alameda and San Francisco, with its principal plant at the former locality.

The controlling members of the company are Mr. Eva, who is what might be called the "business head" of the institution, Mr. Christy, who is general manager of the construction department, and Mr. Gray, who, among other duties, is head of the soliciting department. Mr. Curtis, as head clerk, had general supervision of the accounts.

The Matson Co. had, for about ten years preceding this trouble, been one of their customers with whom

they were on good terms and whom they desired to please. The record shows this without contradiction (V, pages 1687-8, VII, page 2396). This of itself creates a strong presumption against the charges of collusion and fraud, that are made in this case, by which it is hoped to convince the Court of a sudden change in the character of the men above mentioned. Neither, in what follows, do we desire to cast reflection upon Captain Matson, who was always known to be arbitrary and impetuous, but with whom nevertheless, the United was able amicably to do business for so long a period of time. We do not, however, hesitate to charge that, in this matter, he has been misguided and misled by a "new broom" that entered his household after this controversy arose and before it had crystallized.

At the time that the question of the repair of the "Hilonian" came up, the United had other contracts for work upon her.

With affairs in this situation, the Matson Co. asked for bids on certain specifications calling for large repair on the vessel. The United, among others, bid on those specifications. There is some controversy as to which of the exhibits in the record, purporting to be specifications, is the one upon which the United bid. This matter will be referred to later. The bid referred to is "respondent's exhibit Christy 'A' " (Record VII, page 2652) dated July 27th, 1909, for \$11,999, "*all to be in strict accordance with the specifications*".

All the bids were rejected, and new bids asked for.

On August 2nd, 1909, the United submitted a second bid, which was in all respects identical with the first, except that it was \$250 less in amount (respondent's exhibit Christy "B", Record VII, page 2653). The reason for this reduction is correctly stated in the lead pencil memorandum of Captain Saunders, attached to the exhibit.

These bids were again rejected by Captain Matson. Then followed a conference between Captain Matson and Mr. Gray, concerning the details of which there is some dispute, which we will hereafter consider. Suffice it to say that our version of this conference is, that Captain Matson maintained that the price was too high and concluded that the work should be done in accordance with the specifications but as a "time and material job", viz., day's labor, with the figure named in the bid as an "upset price", he to have the benefit of anything that it might cost less than that price. He, further then said that he would put a time keeper on the job, and himself proposed Mr. Putzar, to which Mr. Gray replied "He would be a first class man" (Matson, 1663-1664). Mr. Matson also made inquiry of Putzar's former employers concerning his ability and integrity and received from them satisfactory assurances.

The vessel was sent to the yard and the work begun. Mr. Klitgard as chief engineer, Mr. Saunders as superintendent and Mr. Putzar as timekeeper, represented the Matson Company at the yard. As the work progressed these three consulted and agreed for the Matson Company what should be done and what should not be



done. Captain Matson was East during most of the time that the work was in progress. Mr. Putzar was not only timekeeper, but had an understanding with Captain Matson that he was to be the engineer to take the ship out when her repairs were finished and was actually appointed by Captain Saunders to that office before Captain Matson returned (V, pages 1702-3). Captain Saunders also introduced Mr. Putzar to Mr. Christy, the manager at the yards for the United, as a man having authority to order work done and order changes (V, page 1228). During Klitgard's retention on board the vessel, the latter always consulted with Putzar, and changes ordered were agreed upon as hereinbefore suggested (III, pages 1103-6). The work had not progressed very far when it was ascertained that the specifications would not answer the purpose intended. Repeatedly, during the progress of the work along the line of a particular item of the specifications, after preparations had been made and the work had progressed along that line and parts of the vessel torn out, that line of work had to be abandoned and other and different work substituted (Siverson, III, pages 1090-3). This naturally resulted in loss of time and material and an expense not contemplated by the parties.

It is the contention of the Matson Company that these changes were agreed upon, as substitutes without further charge, between Klitgard for the Matson Company and, in some instances Wilhelmson and, in other instances, Gray for the United. The contention that the substituted work should be made as substitutes

without further compensation is denied by the United. It is also contended, by the Matson Company, that if it should be found unnecessary to move the crankshaft from the ship to the shop, a reduction should be made from the upset price corresponding to the alleged saving that might be made by the detention of the crankshaft on board the ship, and in other respects the upset price was to govern. This is also denied by the United.

In addition to the work hereinbefore considered, other new work continually cropped up and became necessary as the vessel was being dismantled (VII, page 2416). For some of this work, notably the renewal of the tank top, Captain Matson also asked for a bid. When the bid was given he treated it in the same manner that he had treated the original bid, namely, rejected it and asked that the work be done as a time and material job (VII, page 2353). The performance of this work, like with the engine work, exposed unexpected difficulties. After it had been finished and the tank top tested, a crack was found in the plates adjoining the work that had been asked for in the original bid. This necessitated not only the tearing out of the plates that were cracked, but also the destruction and the re-establishment of that portion of the work already finished where the new work had been connected with the cracked plates. So, too, with the tank bulkhead, which under the test disclosed unforeseen weaknesses, requiring further labor and material in its repair (VII, pages 2354, 2355, 2417). Again in the shaft alley the couplings were found so rusted and pitted as to require facing off, resulting in a

shortening of the shaft and this, in its turn, made it necessary to change the position of the bearings (III, page 1098). And so along the line. It is not our present purpose to enumerate the details in this respect, but only to give such a resumé as will indicate some of the reasons why Captain Matson, who was not present, and who only had in mind the original idea respecting the cost of the work called for in the original specifications, was surprised and disappointed when he ascertained the actual cost of the repairs on the ship. In his own words, "I was dumbfounded" (V, page 1686).

Mr. Gray, who, it will appear, was as solicitous for Captain Matson's interests as for his own, and knowing Captain Matson's disposition (which the parties admit is arbitrary and somewhat impetuous, as also appears from his manner of testifying) was very much worried about the increased expense (Klitgard, VII, page 2010) and desired to curtail it. When he found that the new work, cropping up in the progress of the repair and being ordered by the Matson Co.'s representatives, was mounting up so high, he told them about a week and a half or two weeks before the job was finished (the vessel was under repair, in all, about twenty-eight days) "That they were getting themselves into a hole, that they were not going to get out very easily. Matson was out of town at that time and *they had better stop finding any more work on the ship*" (VII, page 2381).

After the work was completed and while Matson was still in the East, the United presented its itemized bills



in the form shown in the exhibits to the libel. Schedule 1 bears date September 27th, 1909.

These bills seem to have been overlooked by the Matson Co.'s office. They were thrown into a drawer "into which the bills were thrown during the course of the month and then sorted over at the end of the month. That was the first time I had seen it or anybody else". Under the custom of that office "the bills were all gone over at the end of every month, they were taken out of that drawer" (Saunders, V, pages 1831-1832). The Matson Co. was usually allowed a credit of from thirty to sixty days (V, page 1750); and sometime in November, the United made application for money. As a result of telegrams between Captain Matson *in the East* and his bookkeeper in San Francisco, a check was tendered for \$15,500, as being payment in full, which the United refused to accept (V, pages 1750-1751; IV, pages 1459-1460). This was done under Captain Matson's orders though at the time he had not seen the bills nor did he know anything about the facts.

When he returned, he says, he called for Putzar's report on the time to check up the bills, and claims that it was reported to him by Captain Saunders that Putzar, who was then at sea as engineer of the "Hilonian", would render his report as soon as he could make it up (V, page 1711). There is evidently some misunderstanding about the nature of the report that Captain Matson was looking for. While it is now contended by the Matson Co. that it was the time sheets, known as Curtis Exhibit 4, nevertheless, when that book, coming



from his possession, lay before him at the hearing, the witness insisted that it was not the report that he was looking for, but that he was looking for a small pocket book. The materiality of this fact arises from the suggestion that Putzar delivered one copy of that exhibit to the United and was withholding the other copy for the purpose of editing it. It turns out, however, that there was another real "report" from Putzar which the witness says he glanced over and saw that it was not what he was looking for and paid no attention to (V, page 1727). He still insists, however, that he was looking for a time book. "Was looking for a time book that he would put the men down that were working in the morning and check them up at night, from day to day. I was not looking for a report that was made up, I wanted that time book which the man that keeps time generally carries with him, so that I could check up the time and see what had been done." To the suggestion that he did not think of looking to the time sheets that were handed in for that purpose, he simply replies "I wanted the time book" (V, pages 1726-1727). Since the pocket book was a mere memorandum and the exhibit referred to was the permanent form into which it was transferred (Curtis, IV, page 1430), the latter was the record which Captain Matson should have consulted, but which he persistently refused to look at. That it was not found in his office when he inquired for it is not at all inconsistent with the fact that it was there, as witness the inaccessibility of the bills which were thrown into a drawer and retained there for at least a month before they could

be found. Appellant does not tell us into which drawer this exhibit was thrown nor what search was made for it before it could be found.

But Captain Matson really did not want the time book and he had no idea of checking up the bill. He was angry about the matter and repudiated the bill simply because he considered it too big. As he says: "The contract was \$11,749 and look at the items of that", evidently forgetting that he had ordered other work which his pleading admits brought the amount up to at least \$22,922. When asked what he checked the bill up with, he says: "I refuse to answer a ridiculous question like that. I had a contract there, you know, that I went by. Anybody knows what I should check it up by.

Q. Is that what you checked up by, against the contract, is that all? A. Is not that enough. (V, pages 1723-1725.)

Klitgard, as engineer, had given him a report upon the work which he does not seem to know anything about. He never conferred with Klitgard about the bill (V, page 1715) though he insists that he was the man who had charge of the work.

When the trouble arose, the United *offered to check the bill up with the Matson Company*, but the offer was not accepted (V, page 1531), though this is the usual practice (IV, page 1486). When we started taking testimony in this case (the second day) we offered to go over the details and check up this entire work in its

detail with the respondent, which offer was ignored (I, pages 165, 166).

These matters are here referred to in order to place the Court in possession of the attitude assumed by the respondent toward this dispute.

Previous to taking the testimony, the same disposition was disclosed in the settlement of the pleadings. The exhibits to the libel set forth the claim of the libelant in the most minute detail, presenting, to the respondent, libelant's claim in an account for every piece of material and hour of work upon the job. This was in accordance with libelant's understanding that the work was to be done upon a time and material basis and that the upset price was abandoned by reason of the changes in the work specified. After having excepted to the libel and the exceptions being overruled, it files its answer, in which it sets up a contract for \$11,749, but admits "omissions, modifications and changes in the specifications under said contract, which were made and omitted *without an agreement between the parties as to the value of said omissions, changes and modifications*".

It further sets up that there was other and additional work and materials furnished outside of the contract, and that the reasonable value of the work and material omitted from the agreement is \$1398.25 and that of the additional work is \$8280.50. It also alleges the furnishing of certain supplies that "were of no greater value than \$937.07", and "expressly reserves the right of proving at the trial of this cause the value" of said materials and supplies, and then alleges that the total

amount due and owing to libelant under the first cause of action, viz. Schedules 1, 2 and 3 of the libel, aggregates not more than \$19,568.32. It then, as an additional defense, alleges a tender of \$22,922.56.

Particularly, however, the answer in Article II (Record, page 46) "denies that Schedules 1, 2 and 3 annexed to said libel *truly set forth the particulars or the value of said materials and labor*". Exceptions were filed to this answer, upon the ground, among others, that the respondent denies that Schedules 1, 2 and 3 annexed to the libel *truly set forth the particulars or the value of said materials and labor*, without stating what particulars are not truly set forth in said schedules or wherein any of said particulars fail to truly set forth the value of said *materials and labor* (p. 58).

A motion to strike these exceptions from the files was denied. The exception just mentioned was allowed and respondent ordered to amend Article II, of its answer, namely, the denial of the particulars and value of the materials and labor contained in the Schedules 1, 2 and 3, so that it would state definitely which of the items of *material and labor* respondent admits the libelant furnished or performed for the steamer "Hilonian" and which of *said items* the respondent denies the libelant furnished or performed; reserving the right to the respondent where it had no knowledge of said particulars to so state. Respondent, however, was not required to make its answer any more definite so far as it concerns the value of any of said items.



In response to this order, the respondent amended its answer by admitting the *heading of the bill*, which is only a statement of the *results* of the labor performed and materials furnished. With regard, however, to the *itemization of the bill, showing the materials furnished and labor performed* together with the value thereof, which libelant had alleged the said schedules did not truly set forth, the respondent took shelter under an allegation of lack of “knowledge, information or belief sufficient to make answer thereto and on that ground calls for proof of the same” (page 62)—this, notwithstanding the other part of its answer alleging the reasonable value of *work and materials* omitted from the alleged agreement as \$1398.25 and of the additional *work and materials furnished* as aforesaid as the sum of \$8280.50, and of other *work and materials* of the value of \$937.07, all of which, together with the \$11,749, claimed to come under the alleged contract, constitutes the \$19,568.32, which the answer admits to be due for the *work and labor claimed by libelant under Schedules 1, 2 and 3*.

It seemed incredible that respondent should have information and belief upon a subject sufficient to give the values of the work and labor included in this allegation and yet be ignorant with respect to the items which composed those amounts. Exceptions were accordingly taken to the amendment upon the ground that it was not a compliance with the order of the Court. At the same time, interrogatories were pro-

pounded to the Matson Company (I, pages 74-79) drawn with a view of securing the itemization upon which the foregoing admitted values were based, to the end that we might be advised to what extent we were called upon to make proof of the items in said schedules. These interrogatories were excepted to as not being allowable under the 23rd Admiralty Rule. The exception to the amendment and the exception to the interrogatories were heard together. It will be noted that the order requiring the answer to be amended was made by Judge Donworth. When the second set of exceptions came on for hearing Judge Bean was on the bench and he overruled both exceptions, namely, our exception to the answer and respondent's exception to the interrogatories (page 84). The respondent then applied for a rehearing upon its exceptions to the interrogatories. The rehearing was granted and the exceptions to the interrogatories sustained, Judge DeHaven being upon the bench (pages 86-89). No appeal could be taken from this order because it was not a final judgment.

By this means the respondent escaped the necessity of making any admissions that would be of any value in determining our rights and thus we were put to a detailed proof of every item as it appeared in the schedules annexed to the libel. Thus was forced upon us the enormous labor of producing the time cards, and verifying them by the testimony of the workmen, and of proving each bolt, scrap of iron and hour of labor that went into the ship. It meant more than this, for the withdrawal of the workmen from their work and

bringing and retaining them on this side of the bay, to take their turn in testifying, meant the disarrangement and upsetting of all the work at the shops.

The object of the defense seems plain. They undoubtedly thought it was an impossible task for us to perform and hence their struggle to be relieved from rendering any aid by admissions in their pleadings and their refusal to sit down and check the matter up with us when suggested both before suit, and also on the second day of the hearing. When it became apparent that we were determined to perform the task at any cost, we were told by counsel that we were not trying our case properly, or as he would try it, and were constantly "badgered" at the hearing with this and the suggestion that our method of proof was unduly enlarging the record. When questions were referred to the Court for decision the same suggestion was repeated by respondent with instructions, volunteered to libelant, as to how he should prove his case. Of course, the Court could not be advised of what was taking place at the hearing before the Commissioner, and, not knowing the details of the controversy, seeming at one time to think that a simple matter was being made unduly complex, but evidently he appreciated the situation when the record came before him.

We were told that the proper way to make our proof was to have experts examine the work and give their opinion of its reasonable value. The value of such expert testimony will be appreciated by the Court when we come to consider the testimony of the experts of-



ferred by the respondent in this case. We may, however, be excused for our suspicion of the sincerity of that advice when we found that respondent was not only engaging experts to give their opinion of the value of this work, but had at the same time, *subsidized another*, from whom it could not get favorable testimony, *not to render any services to the libelant in case the libelant should apply to him* (Hough, Vol. IV, pages 1366-7, 1376-7-8-9-80, 1398-9).

Carrying the same spirit into this appeal, their defense rests upon an attempt to discredit our testimony, our bookkeeping and our methods of conducting our shops, by charges of fraud and collusion against everybody upon the side of the United connected with the work or with the preparation and trial of the case. It is hard to conceive of another place where, according to appellant's contention, could be found such a nest of collective immorality and general wrongdoing. Men, who have for a generation borne unsullied reputations for rectitude and fair dealing, have suddenly lost character because of an ordinary difference of opinion in a business transaction involving a difference of about \$12,000—that, too, where the difference arose between parties who, during a business connection of ten years, have had other differences, which have been amicably adjusted and who, in this case, are represented on the one side by a principal who is disappointed and angered because of the amount of a bill that he has not scrutinized and the details of which he refuses to consider, and on the other by one, who having those details, offers them for mutual consideration and adjustment.



The evidence offered of the details of the charges, as made from day to day, is the ordinary and usual method of the United for keeping track of its *general business*—not the business of the Matson Co. alone, but of all the business that comes into its shops, whether under contract, by day's labor or on its own account. A system intended to advise the United, when working under contract, what its profits on said contract are; when working upon pieces of its own manufacture for stock account, to advise it of the cost of such manufacture, and when working on time and material jobs to advise *both parties* of the cost of the job. That system of accounts is the foundation of the United's very existence and the workmen, who make the initial entries know no difference in the several classes of work, whether contract, time and material or stock account. On a single day a workman may be working on one or on all of said accounts. Each particular job, no matter on what account, is distinguished by an arbitrary number, and in case the workman works on more than one job during a single day, the number of each job with its appropriate time appears on the card. We shall refer to this detail again.

With this outline of the case, we proceed to a consideration of the questions presented by appellant, and shall take them up in their *natural* order, rather than follow appellant in reversing them.

The first question that naturally presents itself is, WHAT WAS THE CONTRACT BETWEEN THE PARTIES?

## I.

## CONTRACT OR QUANTUM MERUIT.

It will be borne in mind that the real controversy is as to the amount due under the first cause of action evidenced by Schedules 1, 2 and 3 of the libel. The amounts claimed under the second cause of action, and evidenced by Schedules 4, 5, 6, 7, 8, 9 and 10 annexed to said libel, are admitted as correct with some minor deductions, namely, \$171.88 from Schedule 4 and \$240 from Schedule 9 (Answer, last paragraph, pages 50 to 51). The District Court sustained the claim of the libelant to all of these minor items so in dispute, except the charge of \$180 in Schedule 9 (VII, page 2595), leaving a balance of but \$231.80 still contended for by appellant in that connection. Before the evidence was completed, Schedules 2 and 3 were also admitted as correct, leaving Schedule 1 as the storm center. Our argument will therefore be addressed for the present at least, to the first cause of action.

Appellant seems to think that, if it can prove that the bid of \$11,749 to do the work "in strict accordance to the specifications," *was accepted*, we are bound by that contract, and cannot recover on a *quantum meruit*. That being the foundation of his case, LET US ASSUME, FOR THE PRESENT, THAT THE BID WAS ACCEPTED.

The appellant's theory is that the work and labor items in Schedule 1 are, in part, covered by a contract to perform certain portions of the work for \$11,749, and that the said contract, so far as it can be traced

and distinguished, is the measure of damages. With this rule as a rule of law, we take no exception. It is so clear and well established that it does not require five pages of quotations for its verification. The trouble with some of the quotations, in appellant's brief (pages 192-197), is that the language quoted was used with reference to the particular facts of a particular case, and would not properly apply to the present case, unless the facts were the same. The rule, as a rule, is, we think, accurately stated in the quotation from I ADDISON ON CONTRACTS, pages 585-6, as follows:

“If work has been agreed to be done, and materials supplied under a building contract for a certain estimated price, and there has subsequently been a deviation from the original plan by consent of the parties, the contract and estimate are not on that account excluded, but are to be the rule of payment, so far as the contract can be traced to have been followed, and the excess only is to be paid for according to the usual rates of charging, but if the original plan has been so entirely abandoned that it is impossible to trace the contract and to say what part of it shall be applied, the workmen may charge for the whole work by measure and value, as if no contract at all had ever been made.”

Our criticism of appellant's position is pointed to the application he attempts to make of that rule to the facts of this case. His summation of the cases cited by him to this point, discloses the inaccuracy of his conception of the case.

Page 197, he says: “We submit that both in California and elsewhere the rule is clear that,

where contract work can be traced and distinguished from *extras*, the contract must prevail, though the *extras* should be figured on a *quantum meruit*."

This statement is misleading, as applied to the present facts, because it does not distinguish between the extras outside of the contract and the extras arising from omissions and changes in the contract itself.

We shall presently see that in the present case it is not a question of contract *and extras*, but an abandonment of the contract itself by the elimination of certain parts and the substitution therefor of a very different kind of work. In the words of respondent's own pleading (Answer, page 47):

"During the progress of said work it was mutually agreed that certain omissions, modifications and changes in said specifications and work to be performed under said contract should be made, and the same were made and omitted, *without an agreement between the parties as to the value of said omissions, changes and modifications.*"

1. We contend that these omissions, changes and modifications are so intimately connected and interwoven with the work called for by the original specifications, as to make it impossible to segregate them, or to segregate the alleged contract price, so as to apply its due and proper proportion to what remained.

That an attempt was made by libelant, to segregate the bill, is admitted by respondent (brief, page 156). That the attempt failed is also admitted, though respondent attributes the failure "to the method pur-



sued in the attempt''. The respondent also makes an attempt, which he offers as the basis of his calculations, but apologizes for it as "the best that could be offered *under the circumstances of the case*" (page 192). His was not, however, an attempt "to trace the contract" and to see what part of it shall be applied as the law requires, but it was an attempt to *re-establish* the contract by *substituting* the "omissions, modifications and changes in said specifications and the work to be performed under said contract" for the *original* specifications and the work to be performed under said contract. To the whole of this *changed contract* he then attempts to apply the *original contract price*. It was not an attempt to apply the contract price to *that portion of the specifications which were performed*, and an allowance for the changes as extras, but an attempt to *prove independent agreements between the parties for each of the omissions, modifications and changes in the specifications* and that *they should be substituted as compensation, the one for the other, without any change in the contract price*—and this too, in direct *contradiction of his answer* that the same were made "*without an agreement between the parties as to the value of said omissions, changes and modifications*" (page 47). His answer, as above quoted, *truly stated the facts with regard to those changes*, but when he came to his proofs, he found it impossible to conform to the rule established by the law and, in order to "force his balance", he advanced the contention of *substituted and compensating work*. This was directly contradicted by the libelant, in which re-

spect the libelant was fully supported by the admissions of the answer. Small wonder that the District Court found against his contention, and with that contention his entire theory of the application of the alleged contract fell. Nothing remaining, he resorts to a cry of fraud in the vain hope of tearing down the *quantum meruit* proof.

We shall refer to this admission of the answer in further detail when we come to consider the testimony upon the same subject.

2. **The Contract an Entirety.**—Further difficulty stared him in the face in the fact that his proposed contract provided that the sum of \$11,749 should be the price of the work, upon the condition that it was “*all to be in strict accordance with the specifications*”. The purpose of this provision is plain when we consult the specifications which contain fifteen items, most of which are interlocking work upon an engine. The contract was an entirety. \$11,749 was to be paid for the work set forth in the specifications as an entirety. It was a competitive bid upon the work as a whole. Changes in the specifications would destroy the entirety.

We reserve the consideration of the details of the work of respondent's alleged experts in their attempted segregation. We are now simply directing our attention to the fallacy of respondent's reasoning by which it attempts to suggest the application of an undisputed rule of law to the particular facts in this case. The experts made no allowance whatever for these changes

but, as already stated, treated them as if agreed upon by the parties as substitutions without further compensation.

As suggested, this contract was an entirety. That such a contract cannot be traced so as to show what part of it shall apply seems patent. Upon that fact depends the settled principal of law, that, when a contract is an entirety, the breach of one of its provisions voids the whole contract, and entitles the plaintiff to sue on a *quantum meruit*.

That such a contract could not be traced, where there are changes in the work specified, is also supported by authority, though it does not seem to require it.

In *LINCOLN v. SCHWARTZ*, 70 Ill. 137, there was an agreement to do mason work on a building for an aggregate sum of \$2880 and the work was interrupted by a fire. The trial Court instructed the jury that “the plaintiffs had a right to suspend work on the building, *and were entitled to recover the reasonable worth of the material furnished and labor done*. The exception taken to the instruction is, as respects the rule of recovery, that recovery could be had only for the value of the work done *according to the price, as regulated by the contract*”.

Thus was raised the very issue that we have here in this case. The appellate Court, however, said:

“It is not apparent how the prices of specific part of the work were regulated by the contract. The contract was, to do the whole work for a



specific sum of money, to be paid for in instalments, on the architect's certificates; and the contract furnished no rule to determine the value of any specific portion of the work. For anything disclosed in the evidence in the case, and as applied thereto, we fail to perceive wherein the instruction given can be held as in violation of the rule that the special contract affords the rule of damages, so far as it can be traced and followed."

In *RHODES v. CLUTE*, 53 Pac. 990, a contract was under consideration that provided for the building of a dwelling house at the agreed price of \$3800 according to the plans prepared by the owner. The contractor commenced operations, but before the foundation was finished, at the instance of the owner, the plans were changed in many particulars indicated in the opinion.

The Court held that this was

"an abandonment of the contract and the creation of a new one without an agreed price for the erection of the structure under the altered plans. Where the owner of premises and a builder enter into a contract for the erection of a building, at an agreed price therefor, and, after part performance by the builder, such material departures from the plans and specifications are made, at the instance of the owner, as will result in a new and different undertaking, without any agreement as to the price for such departures, the builder may recover for the reasonable value of the material and labor furnished in accordance with such new undertaking, and will not be limited to the price agreed upon in the original contract."

In *PITCAIRN v. PHILIP HISS Co.*, 113 Fed. 496, there was under consideration a contract for decorating, furnishing and refitting a dwelling house of the de-



fendant. The contract contained a provision for work to be done in the "daughter's room", specifying details, "cost to be \$5200". Upon this particular portion of the contract the work was defective and the lower Court charged the jury that the plaintiff's bill should not be disallowed on that ground, but that the defendant will be entitled to a deduction for the cost of repairing the defect and the plaintiff would be entitled to recover the *contract price less this deduction*.

The Circuit Court of Appeals held the instruction erroneous and said:

"The contract in question is an entire contract. \$5200 was the price to be paid for its performance. The contract itself did not attempt to apportion this sum among various items, and there was, therefore, no basis for such an appropriation, if otherwise it could have been appropriately made. The contract being entire, the price to be paid is single, and the consideration is solely for the performance of the whole work contracted to be performed."

In *ROUNDS v. AIKEN MFG. Co.*, 36 S. E. Rep. 722, there was an award by arbitrators under consideration. The subject of arbitration was a claim under a contract to do certain work for \$53,198 and in the performance of which contract, as it progressed, extra additions were agreed to be made to the mill and to the work all under the same contract and the builders went on to carry out the same (page 715). On the appeal, the question of the method of the arbitrators in arriving at the value

of the extra work thus done was under consideration, and the Court said (page 722):

“The very terms of the plans and specifications of the architects for the building of the Aiken Cotton Mill at Bath, S. C., required any changes in the plan of that building to be governed by the remuneration the builders, Rounds & Hagler, received for their work and material in building the original mill. In the contract of Rounds & Hagler the gross sum of \$53,198 is contracted for by them in payment for all their work and materials they should furnish in building the mill under their bid in writing. This being a sum in gross, how could anyone determine what any particular price [piece] of the work or material in said mill building would cost?”

Under these *admissions of the pleadings* and the above interpretation of the law applicable to such facts, it would appear that all the discussion, introduced into the record by the Matson Co., as to whether or no there was a “contract” or an acceptance of our bid, would be immaterial. Under the facts alleged in the answer, we might admit all that and still be entitled to recover on the *quantum meruit*.

**3. Value of modifications not agreed on.**—But, as already suggested, the respondent, at the hearing, developed a new theory, in direct contradiction of his pleading, viz.: that the “value of said omissions, changes and modifications” *was agreed upon* by the parties, and that such agreement was that they should be made without affecting the contract price.

We will, therefore, follow him into that subject matter.

The work was not done in accordance with the specifications. It was not done in strict accordance with the specifications nor even in substantial accordance with the specifications. Large and extensive changes were made, and the only contention that the respondent offers respecting these changes is that, when they were agreed upon, *it was also agreed* by the parties that they should be accepted *in lieu of the original* work called for and *at the original price*. In his brief, respondent calls these changes "*the substituted methods of performing certain items of the specification work and the compensation work for omitted specification work*". The entire argument under this head is based upon the proposition that the parties agreed to the changes and also *agreed as to their value*, so that these omissions and changes should balance each other; or, to use the language of the respondent, the extra work done was *compensated for* by the items of the specifications under which the work was omitted.

The present contention of respondent is developed in the testimony of Mr. Klitgard (VI, pages 1928-30), where, in speaking of the second item of the specifications, which was omitted, he said "that he agreed with Mr. Williamson for a 12 inch balance piston on top of the low pressure valve" "that was to be a recompense for the second item". When asked what he meant by recompense, he said: "The understanding was that the work was being done in recompense for *to keep the original specifications intact, so that there would be no*



*debts or credits*”. He says that this agreement was entered into between himself and Mr. Williamson. That, later, he told Mr. Gray about it, who said “that any alterations or things of that nature that in the future turn up, as long as Mr. Williamson was satisfied, he would be satisfied; that any agreement I came to with Mr. Williamson as far as recompensation matters were concerned, was all right”. He is then asked whether in his opinion “There is any material difference in the value of the work as called for under the second item of the specification and the compensation work which was done in place of that item”, and he says: “No, sir, there is no material difference. The matter was figured very closely at the time”.

Other changes were referred to where the witness testifies that an agreement was made as to the value, and respondent was *to pay* a difference in value, as, for instance with respect to item No. 4 of the specifications, he says (page 1931): “The agreement was between Mr. Williamson and myself that we would pay for the babbitting of the shoes; in other respects, the changes that had been made in this item were in recompense for what was not done under the item”. He explains the reason of the agreement to make this payment by saying, “Merely because if they had to cast new shoes instead of reconstructing the shoes, it would become a little more expensive” \* \* \* “By reason of the fact that patterns had to be made and new castings made, and a great deal more machining had to be done on them”. That to cover the extra expense respondent was to allow the United the price of the challenge metal “*in addition to the contract*”.

We do not now undertake to enumerate all the instances in which this occurred, but make the foregoing extract from the testimony merely for the purpose of illustrating the nature of the agreements which are now contended for by respondent. They are, in each case, in effect *an agreement* respecting “the value of said omissions, changes and modifications” and the manner of adjusting or paying therefor.

The contention rests solely upon the testimony of Mr. Klitgard with, in some instances, an attempted corroboration by Captain Saunders. It is directly and unqualifiedly denied by Williamson and Gray, and in this denial they are again supported by the respondent’s own admission made in its pleadings, for, as we have already noted, the answer distinctly and inqualifiedly alleges (page 47):

“That during the progress of said work, it was mutually agreed that certain omissions, modifications and changes in said specifications and the work to be performed under said contract should be made, and the same were made and omitted, *without an agreement between the parties as to the value of said omissions, changes and modifications.*” The answer further alleged: “That there was other work done not called for by the contract”, for which no price was agreed upon other than that the same should be compensated for at its just and reasonable value.”

These allegations are followed by an allegation:

“That the *just and reasonable value* of the work and materials omitted as aforesaid by agreement of the parties from the original contract as aforesaid is the sum of \$1398.25, and of the additional work

*and materials furnished as aforesaid the sum of of \$8280.50."*

It will thus be noted that the foregoing pleading not only directly alleges that the changes were made *without an agreement as to the value* thereof, but follows with an allegation of the *just and reasonable value of the extra work caused by those changes*. It is true that there is included, in that allegation of just and reasonable value, the value of "*other work* done not called for by the contract", but that both the "more expensive work", for which Mr. Klitgard says, the respondent was to pay "in addition to the contract", as well as the "other work not included in the contract", are covered by this allegation, is shown by the fact that nowhere else in the answer is that extra allowance provided for. The \$937.07, which is the subject of the next paragraph of the answer, *has no connection whatever with the foregoing*. The nature of the work of which it is composed is illustrated by Exhibit Heynemann No. 2, Vol. VII, page 2685. The items there referred to are those contained in Schedules 2 and 3 of the libel (pages 32-36) and are uncontested (Record, page 2020 and Brief, page 179). They are included in the "allowed bills as per schedules (bills 'B') \$3890" of the above Exhibit Heynemann No. 2 (page 2687) while the \$8280.50 is in said Exhibit itemized as "extra work contained in bill 'A' " with "overtime allowed on extra work".

That the allegation of \$8280.50, as the just and reasonable value, includes an allegation of the value of the changes, is further evidenced by the fact that the esti-



mates, under said Heynemann's Exhibit No. 2, are based upon the detail of Kinsman's Exhibit No. 2, which is an itemization of the bill head of Schedule No. 1 of the libel (pages 1583-1855), which schedule contained the specification work, as changed and modified, together with the extra work outside of the specifications. On their direct examination the experts followed these items of Kinsman's Exhibit No. 2 and pointed out the extras, item by item, including the allowance for changes and omissions in the original specifications with the allowance for extra work done independent of said changes in the specifications and sum up the aggregate of the two in the amount \$8,280.50 (see Heynemann's testimony, pages 2023 to 2050, inclusive).

The summing up is in the following language:

"Q. You made an estimate on the value of this work, did you?

A. Yes, sir.

Q. What was the value of the extra work that you have testified to?

A. \$6080.50 \* \* \*

Q. \$6080 for the extra work? A. Yes.

Q. Did you place that figure in writing?

A. Yes, sir, I did.

Q. And signed the writing? A. Yes, sir.

Q. I ask you if that is the writing? (handing)

A. Yes, sir, that is the writing. It is \$6280.50 instead of \$6080.50 and we further made an allowance of \$2000 on top of that for overtime for the extra work.

Q. What did you allow on the minor bills which are covered by *Schedules 2 to 10 of the libel*?

A. We allowed \$4827.07'' (pages 2050 to 2051).

We have been thus particular to show how the testimony corresponds with the allegation in order that the exact nature of the allegation as to the value of extra work shall not be misunderstood, because this allegation, as to the value of the extra work, in connection with the allegation that it was performed without an agreement between the parties as to the value of said omissions, changes and modifications, makes it absolutely certain that respondent, at the time its answer was drawn, was preferring no contention that the changes and modifications of the specifications were to compensate one for the other. Said admission of the pleading, as well as the evidence thus offered in support of it, proves conclusively that respondent knew that there was no agreement as to values, when those changes and modifications were made, nor was it understood, as Klitgard testifies, that there was an agreement to keep the original specifications intact so that there would be no debit or credit.

Under these circumstances what conclusion is to be arrived at with respect to the present contention that these values were agreed upon and were offset one by the other? And what are we to think of Mr. Klitgard's testimony "That there were to be no debits or credits", "that the figures that they [we] had given us [them] for these original specifications would remain intact", when, almost in the next breath, he admits that some of the changes were to be paid for "in addition to the contract" because of "more expensive work"?



The major portion of respondent's argument under this head is a collation of testimony to the effect that Wilhelmson and Gray *consented* to the changes. He might have saved himself this trouble, for there is no controversy upon that question. The changes were made by the consent of the parties, but there is not one word of evidence outside of the testimony of Mr. Klitgard, and in some instances of Captain Saunders, to the effect that we ever agreed as to the value of those changes or that those changes should not affect the contract price—that the additions and omissions should compensate each other.

The object of this collation of the testimony, is, however, disclosed by what we consider the unfair treatment given to it in the brief. Attempt is made to make the testimony wherein the witness admits he *consented to the changes* appear as though it were an admission that he consented to them *as a substitution without charge*.

After giving his own interpretation of the testimony of Mr. Gray (brief, page 167), which testimony, however, shows that Gray had refused to "swap" or substitute as compensation, the "balance cylinder" for work called for by the specifications, the respondent proceeds as follows:

"We then find this very interesting evidence:

'Q. Why did you decline to make a greater profit by a larger work if the whole job was a time and material job?

A. I did not refuse *to put in* the cylinder for him. He could have the cylinder or anything else he wanted on the ship. But he tried, his proposi-

tion was to take in place of the work on the valve as specified—he had a list of work for doing this other job, one offsetting the other.’

Here Mr. Gray was cornered and, we submit, he did not get out very gracefully. For him to say ‘I did not refuse’ was in direct contradiction of all his previous evidence as well as the evidence of Wilhelmson. To curtail the examination of the witness upon the subject of these changes and *relieve him from further embarrassment*, he was asked:

‘Q. And this testimony that you have given with reference to the balance cylinder would apply, would it not, Mr. Gray, to all of Klitgard’s requests for changing the work? A. Oh, yes, the same thing right straight through; yes.’ ”

How in the name of common sense can respondent expect one to accept his interpretation of this testimony? The entire evidence of libelant up to this point was directed to those changes in the work by the *consent* of the parties *without* agreement as to *values*, and the entire testimony of Mr. Gray is in conformity therewith. And how can respondent contend for a different interpretation in the words “‘I did not refuse” when they appear in direct connection with the further statement showing exactly what the witness meant when he said he did not refuse, namely, “‘I did not refuse to *put in the cylinder for him* \* \* \* but he tried, his proposition was to take in place of the work on the valve as specified \* \* \* he had a list of work for doing this very job, *one offsetting the other.*” ’

This is a sample of the unfair manner in which the respondent treats the evidence on many points throughout his brief, and which treatment of the evidence seems

to be his only foundation for his contention on this appeal.

Here let us supply the record of the proceedings connecting the above with the question and answer which respondent says was put to the witness to “*relieve him from further embarrassment*” (pages <sup>24 36 - 37</sup> ~~24, 37~~):

“Q. If it was a time and material job that would have been an advantageous proceeding for you, would it not?

A. Nothing wrong with it at all—

Q. But if it was a contract—

A. (Intg)—to have done one job and stopped the other.

Q. If it was a contract job it would not have been an advantageous proceeding for you?

Mr. FRANK. Now, just one moment. It is time for me to interfere in this matter, because you are wasting time. The witness has not testified that this job, according to the specifications, was not to be done for a given price. He said it was an outside price if it was done strictly according to the specifications. Now, you are using the word ‘contract’ which might have a double meaning, as though it meant a regularly executed written contract. He told you he rejected the bid, and that this was an outside price for doing it according to the specifications strictly, and if you changed the specifications he was not bound by that. What is the use of arguing as to the double meaning of the word ‘contract’ with the witness? You are trying to prove by this witness he had a contract because he refused to substitute one element of the specifications for another under the agreement which he has testified to. I do not care whether you call it a contract or what you call it, as long as you don’t use a double meaning.

Mr. McCLANAHAN. We will get back to the contract now. Read the question.



(Last question repeated by the reporter.)

A. If it was a contract, no, of course it would not be an advantageous proceeding under these conditions.

Q. All right. And this testimony that you have given with reference to the balance cylinder would apply, would it not Mr. Gray, to all of Mr. Klitgard's requests for exchanging the work?

A. Oh, yes, the same thing right straight through; yes."

Mr. Wilhelmson's testimony upon this subject is directly to the point, that he not only had no power to consent to changes in the specifications, independent of the question of values, but further that he *never did* agree to such changes, but referred them to Mr. Gray. He says:

"Well, I was entertained by the proposition of Mr. Klitgard, but I cannot have no voice, but I have no voice in that matter; this is the specification and it is up to the firm to change anything. *The mechanical end is what I was there for to attend to, and not any arguments why and wherefore.*

Q. Well, did you agree to it? A. No." (VII page 2502.)

The comment of the respondent upon the testimony of this witness is, that "we submit that it is weak" (page 164) and that the witness was still in the employ of libelant. Reference is made to his testimony in his earlier examination in the case, where he says, "To the best of my ability and memory there were changes, but it is utterly impossible for me to remember *all* the changes" and that two or three days before testifying again he had "talked with counsel,



Curtis and Gray," which later is thrown in to give the impression that he then received instructions respecting this matter notwithstanding it is undisputed "that his talk with counsel, Gray and Curtis did not have any reference to that subject," but that said testimony "was the result of a scratching up process."

In order to discredit the testimony of Wilhelmson concerning those "talks with counsel, Gray and Curtis," reference is made to the cross-examination of Mr. Gray with the following quotation therefrom:

"Q. Have you talked with him with reference to compensation, this 'swap' work? A. Yes.

Q. He is going to testify, is he, on that subject?

A. I do not know, you have got me. I am not running this case."

But why stop at that point in Mr. Gray's testimony when what follows shows conclusively that when Mr. Gray testified to his talk with Mr. Wilhelmson concerning the compensation or "swap" work, he referred to the time when the question *originally came up in the course of the work and not to any time since Mr. Wilhelmson's former testimony in the case.*

The following is the entire testimony of Mr. Gray upon the subject (page 2430):

"Q. Have you talked with Mr. Wilhelmson about this case?

A. I guess I have talked with everybody in San Francisco about this case.

Q. Have you talked with him with reference to *your testimony* in this case?

A. What part of the testimony.

Q. Any part. A. Oh, yes, I have spoken to him.

Q. Have you talked with him with reference to compensation, this swap work? A. Yes.

Q. He is going to testify, is he, on that subject?

A. I do not know. You have got me; I am not running the case.

Q. *What did you and he have to say about this compensation work so called?*

A. *Well, I had about the same to say to him that I had with Klitgard, whatever it was, that Klitgard was always trying to swap one thing for another. I don't know what he had in his mind.*

Q. Did he tell you——

A. (Contg) *Louis came to me with two or three propositions and I told him it was impossible, it could not be done.*

Q. Who is Louis? A. Louis Wilhelmson.

Q. What proposition did he come to you with?

A. He came to me particularly with that balance business.

Q. The balance cylinder? A. Yes.

Q. What did he say when he came to you with that?

A. Well, he said Klitgard had made a proposition.

Q. What was it?

A. To put on a balance cylinder instead of doing the work as specified on the low pressure seat in the valve.

Q. What else?

A. That covers it, with reference to that item.

Q. What did Williamson come to you for, to get your permission?

A. Well, he came to me with Klitgard's desire, with what Klitgard requested.

Q. Wanting your permission, did he?

A. Yes, wanted my permission.

Q. And what did you tell him? A. Told him No."

The examination of Mr. Williamson was directed to talk he might have had with anyone "*since your first testimony given on Sept. 11th, 1911*" (page 2516). And he said that "a couple of days ago I was to appear here and wait here to appear," which is the time that he talked to "counsel, Curtis and Gray." That he did not talk "particularly regarding this case" (page 2517).

It seems to us to be going pretty far afield to take those few lines out of Gray's testimony to establish a claim that he contradicts Mr. Williamson's testimony that the latter had not talked about the "swap" proposition *since September 11th, 1911*. Mr. Gray is asked *generally* if he had talked with Mr. Williamson about the case, without fixing any time, and he says, he has talked about it to everybody in San Francisco. He is then asked if he had talked with Williamson regarding "your" testimony in the case, without fixing any time, and he says "Yes, I have spoken to him." He is then asked if he talked with him with reference to the compensation, this "swap work"—again without fixing any time, and the witness answers "Yes." He is then asked "*What did you and he have to say about this compensation work so called?*" whereupon the witness relates what occurred between them in that connection *at the time the work was in progress*. Can anything be more clear, then, that the testimony of Mr. Gray respecting conversations with Mr. Williamson upon the question of "swap work" referring only to that time, and not to any conversations held subsequent to September 11th, 1911,—to conversations held at a date to which Mr. Williamson himself has fully testified?

“The scratching up process” to which respondent refers is a very ordinary matter. The witness was being asked with respect to the changes being agreed to as to an offset which is followed by the question

“And you scratched your memory up on that subject without any assistance from anyone?”

A. Yes, sir. *I may think of a whole lot more details probably six months from now.*

Q. Then your memory gets better as time passes?

A. *Some times a thing may occur to a person's mind.*

Q. Nothing has occurred to your mind since your examination in September in reference to these compensation changes so called, has there?

A. No, sir, that was clear to my mind at all times.

Q. Then why did you not speak about the compensation changes in your first examination in September?

Mr. FRANK. I object to that because his examination in September had nothing to do with compensation changes. He was not asked about it, it was an entirely different subject at that time.

Mr. McCLANAHAN. Answer the Question.

A. I was asked on cards and such things as that.

Q. Don't you remember Mr. Williamson that you were asked about changes, *changes from the original specifications in this work*, you said “There had been changes, but you had no recollection of the cause or reason or nature of these changes?”

A. The details of them” (pages 2423, 2424).

The manner in which the subject was approached and the method in which it was attempted to confound the witness by calling his attention to testimony with respect to the changes, where no question of compensation was involved, and imputing to him a denial of



any knowledge or memory at that time concerning the *compensation element*, is illustrated by the testimony found in the record, Vol. VII, pages 2519 to 2524.

We cannot but note the effrontery of respondent, in its attempt to charge these two witnesses with false swearing upon this subject, when their testimony is in conformity with the allegations of respondents own answer.

Capt. Saunders is cited as supporting Klitgard in his testimony as to an agreement that these changes should be made without further compensation. The citations are to Vol. 5, pages 1781, 1782, 1811, and 1783; but that testimony discloses that the witness does not testify to any such agreement on the part of Mr. Wilhelmson. Speaking of the change in item No. 2 of the specifications, page 1781, the witness was asked whether he was present when that change was agreed upon and says:

“Not at first. I was present when it was finally agreed upon.”

“Q. Do you remember now the gist of the conversation?”

A. *Mr. Klitgard explained to me* that the work as called for in the specifications did not need to be done \* \* \* and that the United Engineering Works, through Mr. Williamson had agreed to put what he called the balance cylinder on as compensation for not performing this item 2 of the specifications.

Q. Was the question of debit or credit to either party mentioned?

A. There was to be no debit or credit; it was considered an equal exchange.

Q. Did Mr. Williamson make any statement at that time of approval or disapproval?

Q. He thought that that would be the proper thing to do with the cylinder.

Q. Was it agreed or not at that time to make the compensation?

\* \* \* \* \*

A. I reported that to Capt. Matson and he said that it would be alright if Mr. Klitgard approved. I so reported to Mr. Klitgard that he was to do as he considered best in that respect."

The refusal of the witness to directly testify to anything showing Mr. Williamson's *agreement to the compensation element* of that conversation is apparent. Saying that Mr. Williamson thought it a proper thing to do with the cylinder, applies to the agreement to *change the work* but not necessarily to the mode of *compensation*, and when the question is directly put to him in respect to the compensation he evades it by saying that he reported that to Captain Matson. He thus leaves this particular matter to be inferred from his statement of what Klitgard said to him in the presence of Williamson, but refuses directly to affirm that this particular part of the conversation was approved by Williamson. In the face of Mr. Williamson's denial of his approval of that particular part of the conversation this uncertain testimony is significant. It can hardly be accepted as controverting Williamson's statement.

On the next page, speaking of item No. 7, when both Gray and Williamson were present, he says that the "patch was finally agreed upon as being the best

thing.” He is asked “Do you know anything about any money compensation, a debit or a credit upon that proposition?” A. There was to be no compensation unless the weight of the patch exceeded a certain amount, about 900 pounds. Q. And in case that it did exceed the weight suggested, what was the understanding? A. The ship was to pay for the extra weight.

This is directly contradicted by both Mr. Gray and Williamson.

On the next page, 1784, he testifies to the change by the substitution of two stanchions on the forecastle-head in place of the work on the windlass, which he said “we decided to exchange for the two stanchions on the forecastle-head.”

With respect to the rollers for the chain-leads, he is asked:

“Captain, do you know about any credits that were allowed the Matson Navigation Company by the United Engineering Works arising out of this repair job? A. Yes.”

Apparently this question refers to the repair on the rollers or chain-leads, but what follows shows that that is not the case, for the credit memorandums allowed by the libellant for scrap brass for the old propeller and old tail-shaft as well as an old propeller and old tail-shaft on the steamer “Enterprise” are then introduced in evidence and it was to these that the question referred. But there is nothing to show that any one of these credits had anything to do with the work called

for by changes made in the specifications. The propeller wheel and tail-shaft on both the "Hilonian and Enterprise" are not specification items and there is nothing in any testimony showing that the scrap brass arose therefrom either.

To resume, therefore, we have on this question of agreement as to value of the changes in the specifications, on the one side, the positive testimony of Gray and Wilhelmson, supported by the respondent's answer, that there was no such agreement, with the positive testimony of Klitgard, in some instances supported by the inconclusive testimony of Saunders on the other, that there was. In addition we have the burden of proof on the respondent. Under such conditions it can scarcely be said that the finding of the lower court was erroneous.

Respondent further offers the fact that the changes in the specifications bore the same job number as the specifications originally bore, as evidence "That these changes were compensation work and intended to be carried on without affecting the contract" (brief, page 169). He does not, however, appear to enforce the suggestion by anything particular or germane, except to ask the question "Why if it was not compensation or substitute work, was it not given a separate number" (page 171).

That he had in view the answer to his own question is shown by his immediately taking up the testimony of Mr. Curtis to the effect that the changes referred to so complicated the work that it was no longer practical to



give them separate numbers and therefore he ordered the entire work to be done collectively. He refers to Vol. IV, page 1463 for this testimony. It is more clearly set forth in Vol V, page 1588, as follows:

“My reason for doing that was that there were so many changes and interchanges that conflicted one with the other, with pieces that were changed and rechanged, machined and remachined to suit different conditions that arose that it was impossible to segregate and keep a segregation in work under a number, for the reason there were so many changes occurring. It would take a great number of numbers to keep track of it”.

There is no contradiction of this state of facts and it explains the condition fully. Respondent's question is thus fully answered.

To say as respondent does that this was a deliberate mixing up of the work, does not affect the question we are now considering, namely, whether or no the uniform number can be accepted as evidence of a contract that the changes should be compensation or substituted work.

Attention will be given under its appropriate head to the balance of the argument under that heading, namely, that the work could have been kept separate.

That these changes in the specification (as well as the “*extras* and many of them, new work not contemplated or discovered except as the job progressed” admitted by respondents, brief, page 168), caused unnecessary loss of time, must be evident, notwithstanding respondent attempts to confine said loss of time to the latter,

extras, (page 168). They would cause loss of time for the very same reason that it is admitted these other extras caused loss of time, for those changes were also "new work not contemplated or discovered except as the job progressed" (brief, page 169). They were, therefore, subject to the same conditions which would cause unnecessary loss of time as the other extras were subject to. This is well illustrated in Siverson's testimony, Vol. III, pages 1089 to 1096, and Taylor's testimony Vol. III, page 1085.

In this connection, reference is made to one part of Siverson's testimony (brief, pages 168-169) in which Siverson referred to an instance as an illustration of how that loss of time would occur. Respondent does not attempt to gainsay the fact, but seizes upon it to suggest that the illustration is an unfortunate one because, as respondent contends, that particular loss of time was libelant's fault; that the work referred to in the illustration was the subject of a contract. Respondent must have been conscious of the fact that this did not aid his argument for he concludes, "but we are digressing somewhat." And that is the fact, for whether the illustration be of an instance under contract or one not under contract, it is a perfect illustration of how time is lost on such work, and, therefore, is as applicable to non-contract conditions, where specifications are being followed, as to contract conditions.

But the illustration offered by Mr. Siverson was not the subject of a contract.

The specifications provided (respondent's Exhibit "Christy C" page 2656): "Should spring bearings require remetaling, a separate price will be allowed for each." When it was determined to remetal them, only *two* were selected as requiring such work (page 1091), and, as Siverson says, "Those two were removed to the shop to be remetalled, the remaining three were cleaned up, scraped and scraped and dressed up in the usual manner with all grooves cut, *placed aside ready to be replaced* when the shaft and conditions required that it should be replaced." After this work had been done it was decided to *remetal these other three* and thus the above work on them was lost. The contract, therefore, under the specifications, as originally entered into, was to remetal *two* spring bearings, and it was afterwards changed by requiring remetalling of the other three that under the original agreement had been prepared for placement without remetalling. Was that our fault as stated by respondent? And were we not to be paid for the lost work which was rendered necessary by respondent's change of mind?

So we see that the witness was not "led by counsel to fall into error".

The foregoing would seem to establish clearly that whether there were or were not originally a contract for part of the work done under Schedule 1, the contract price could cut no figure in arriving at what is

due from the respondent to the libelant but that the libelant is entitled to recover as a *quantum meruit*.

4. **Bid was not accepted, but cost to be determined by time and material.**—This proposition is, however, further enforced by the nature of the agreement between the parties when the work was first entered upon, which as we contend was an agreement to do the work in strict accordance to the specifications *upon a time and material basis with \$11,749 as an upset price*.

In view of the foregoing discussion, we think we could very well afford to omit the consideration of this question and would do so were it not for respondent's attack upon us.

Our discussion under this head will also, in a large degree, tend to show how little dependence can be placed upon the testimony of respondent's alleged experts in making up respondent's estimate of the value of the work called for by Schedule 1 of the libel.

Our argument, thus far, proceeds upon the assumption that the bid was accepted, but we contend it was not accepted.

The difference, between the witnesses of the respondent and those of the libelant, to the making of the contract, is very narrow and, as we think, immaterial. Respondent raises his contention upon the statement of Captain Matson that he told Mr. Gray that he *would accept his bid*, but Captain Matson himself qualifies that acceptance. Construing his testimony in its most favorable light for respondent, it is that he told Gray



that while he considered the bid too high, he would accept the bid, but if the crankshaft did not have to come out, he would expect a reduction of a couple of thousand dollars, and that he would put on a timekeeper *for the purpose of securing that reduction*. He does not, however, confine himself to that purpose with respect to the timekeeper, but says, the timekeeper was put on to keep time *on the whole job*, unquestionably referring to the whole work of repairs then contemplated to that ship. Mr. Gray says, that Captain Matson said he considered the bid too high and that they would put a timekeeper on the job, and if it turned out that the expense of doing the work on a time and material basis was less than the bid, Matson was to have the benefit thereof. Under Matson's own statement therefore he did not accept the bid *as made*, but injected into it a new clause or condition not contained in the specifications or the bid. It is plain, therefore, that the contract is not evidenced by the specifications and the bid; that there was a qualification with respect thereto, and the nature of that qualification *depends upon the crankshaft controversy*. Matson admits that he objected to the bid as being too high and that the reduction which he expected was to be determined by the time and material element of the crankshaft specification, namely, No. 9. To begin with, an inspection of the specifications shows that that is the largest piece of work contained in the specifications.

It is true that Captain Matson is supported in his testimony by the testimony of Captain Saunders, his

employee, who claims to have been the only third party present, but questions of fact are not to be determined solely by the number of witnesses testifying on either side. There are other elements of evidence more convincing than the direct testimony of the parties interested or their employees. Let us therefore consider

THE CRANKSHAFT CONTROVERSY—To begin with, it is urged that there was a difference of opinion existing at the time the specifications were drawn up by Klitgard, Matson's engineer, as to whether or no that crankshaft should be taken out, and that Klitgard himself did not think it necessary. Under these circumstances, the question forces itself upon us, why did Klitgard draw up specifications requiring the crankshaft to be removed? Why did he not draw up specifications for the work which he deemed necessary to be done, leaving the removal of the crankshaft to be charged as an extra, in case it finally be determined that its removal was necessary, the same as was done with the large amount of other work that was subsequently found to be necessary and by agreement done upon a time and material basis? Or, if it be said that they desired as few extras as possible, why did he not draw the specifications in the alternative and take bids on both sets of specifications? Again, under respondent's contention, this question was not one that arose in an emergency, but it had been under consideration for months. The dispute, as they say, concerning the necessity of removing the crankshaft, had been under discussion for a long time. What, for instance, would have been their posi-

tion with the Union Iron Works or Risdon Iron Works, from both of whom they asked for bids on the specifications requiring the removal of the crankshaft? They had no dispute with them regarding the crankshaft; had not discussed it with them, and, if they had any doubt about the necessity of its removal, the question would have been entirely new to each of the other bidders. Did they expect them to accept a stipulated job for a fixed sum and, after the performance of the contract was entered upon,—the engine dismantled—raise with them the question as to whether or no the crankshaft should be removed and demand a reduction from the contract price? Such a procedure is highly improbable.

But the best evidence of what the agreement was came to the surface during the trial of the case. The Court will notice that during the early part of the testimony the respondent developed a theory that the crankshaft was not removed to the shop *because the United did not have a lathe in the shop of sufficient size to turn the shaft* (Vol. I, pages 249-256; Vol. III, pages 1093-94; Vol. IV, pages 1177-78), and they persisted in that contention until they discovered that they could not substantiate it (Christy, Vol. IV, page 1277; Gray, Vol. VII, page 2364; pages 2493-2499; Siverson, IV, page 1180). Nothing was said about it being unnecessary. The contention was that, while necessary, we were unable to perform the work for lack of facilities. For this reason they were contending for a reduction in the bill.



During the time of taking the testimony they made a complete change of front and, for the first time, advanced the contention that it was not *necessary* and *that it had been agreed* that, if it should transpire that it was not necessary, they should have an allowance of about \$2000. If there had been an agreement between the parties before the work was entered upon, which provided for the contingency of its being unnecessary to take it out, why prefer the contention that the *reason* it was not taken out was because of our lack of facilities to turn it *as called for by the contract?*

Then we have another and very interesting piece of evidence substantiating the above, and also disclosing the methods and the subserviency of respondent's alleged experts to the purpose of their master. When the experts were under cross-examination for the purpose of ascertaining the details, and thereby testing the accuracy of respondent's Exhibit Heyneman No. 4, the report of the experts contained in libelant's Exhibit Heyneman No. 2 (VII, page 2683) was shown to the witness by respondent's counsel to enable the witness to conform his testimony thereto as to amounts. The inspection of this document was requested by counsel for libelant (VI, page 2055). The document contains this statement (VII, pages 2684-2685):

“Bill ‘A’ consists of work done under contract and extra work. The contract price as per the offer of United Engineering Works under date of August 2nd, 1909, was \$11,749 and twenty-five calendar days item limit. *There was a benefit coming to the Matson Navigation Company if it*



*was decided not to take the crankshaft out of the ship''.*

In the same document (pages 2686-2687) is the following:

“With reference to the benefits coming to the steamship company for certain work not done and certain material not furnished *in the removal of the crankshaft*, we find a fair value of this amount to be \$1398.25”

That letter bears date San Francisco, *April 29th, 1910.*

The examination of the witnesses and the presentation of the document took place Saturday, *November 4th, 1911* (page 2012).

Then the following took place (VI, page 2056):

Mr. FRANK. Q. When was this letter written, Mr. Heynemann, or when was it signed—the one dated there April 29, 1910?

A. It was signed this morning.

Q. Freshly written? A. Yes.

Q. Why did you put that date on?

Mr. McCLANAHAN. What date?

Mr. FRANK. Q. April 29, 1910?

A. Because we wrote a letter on that date, and there was an error in it, and so we copied the letter, leaving out the error.

Q. Where is the letter that you copied?

A. I could not tell you.

Q. Why couldn't you tell me?

A. Because I don't know where it is.

Q. When did you copy it?

A. It was copied, as far as I know, this morning. I did not copy it at all.

Mr. FRANK. Have you got the other letter, Mr. McClanahan?

Mr. McCLANAHAN. I did not copy it, Mr. Frank.

Mr. FRANK. Q. Do you know who has got the copy of it—do you know who did copy it?

A. No, I don't.

Q. That is very strange.

Mr. McCLANAHAN. Is that a question? If it is addressed to me, I will say this, that I will make the strange thing appear perfectly plain if counsel wants it.

Mr. FRANK. Q. Did you read the original letter of April, 1910, and compare it with this before you signed this? A. No, I did not.

Q. You did not? A. No.

Q. Do you know whether Mr. Gardner has the original letter?

A. I think very likely he has, though I don't know.

Q. And Mr. Gardner brought this letter here to-day for your signature; is that right?

A. No. He did not bring it over here. I signed it in Mr. Gardner's office; he did not bring it here, I signed it in his office.

Q. And then you saw the original letter in Mr. Gardner's office at the time you signed it?

A. No, I did not see it.

Q. You did not see it?

A. But I knew the contents of the original letter.

Q. We will get the original letter and then we will be satisfied.

Mr. McCLANAHAN. Let it appear that the paper which counsel was handed at his request by me is a copy of a letter dated April 16, 1910, addressed to the Matson Navigation Company and unsigned, and attached to it is a letter also addressed to the Matson Navigation Company dated April 29, 1910, and signed by Fred A. Gardner and L. Heynemann."

At the closed of the session that day a demand was made for the production of the *original* letter from

which the above mentioned letter was copied, and on the following Monday it was produced, but before the witness was examined, counsel for respondent suggested a private conference and the following took place (page 2065):

“Mr. McCALAHAN. Mr. Frank, I think you are chasing rainbows in this matter of the investigation in the change in the letter, and I want to, if possible put you right on that *without encumbering the record*, ~~For that~~ <sup>Purpose</sup> ~~reason~~ I want to submit to you frankly, and in the right spirit, all the data on which you may determine whether you think it is right to put it into the record, *but if we once enter into it, it is going to extend the record to a great length. Do you understand me?*

Mr. FRANK. I understand you. (After a colloquy between counsel and an examination of papers) I think I will have to pursue the examination.”

We note at this time that, after the foregoing *warning* as to what would happen if we persisted in putting the second letter into the record, the attempted explanation or justification of the remarkable condition the letter disclosed, which was “going to extend the record to a great length,” is contained in just fifteen lines of the printed record, and will presently be discussed.

The original letter is found in volume VII, pages 2678, 2681, and is marked libellant’s exhibit Heyneman No. 1.

In that letter the parts above quoted from libellant’s exhibit Heyneman No. 2 originally read as follows:

“Bill ‘A’ consists of work done under contract and extra work. The contract price as per the offer of the United Engineering Works under date

August 2, 1909, was \$11,749. and twenty-five days *with the proviso that this was to be an upset price and if the work could be done for less than the above amount, figuring the best obtainable rates, both for material and labor, then the steamship company should receive the benefit of same.* This difference between the contract price and the amount for which the work could be done we have designated under the caption 'Benefits'. Besides the above benefits, we have also figured in certain allowances for scrap material as will appear later on."

Again (page 2681):

"With reference to the benefits coming to the steamship company for certain work not done and certain material not furnished *as per original contract*, we find a fair value for this amount to be \$1039.25."

This is precisely the agreement to which Mr. Gray has testified as the one entered into between him and Captain Matson and this proves conclusively that at least up to the time when they discovered, in the course of the testimony, that their contention that we had no facilities to take the crankshaft out had failed, that their understanding of the agreement was precisely the same. The experts named were doing their work under the instructions and directions of the respondents and this indicates precisely what the detail of their instructions was with respect to this contract.

Now for the explanation that was "going to extend the record to a great length". At the close of Mr. Heyneman's testimony, Mr. McClanahan takes the



stand and begins with an explanation of why he did not call Mr. Putzar. This will be referred to again. At the end of that explanation, we have the following (VI, page 2199):

“In regard to the redrafting of the letter of April 29th, 1910, I would say that that was redrafted solely at my suggestion and for the reason that I did not understand the proviso contained on the first page, nor could I learn from either Messrs. Gardner or Heyneman, where they had secured that information. *I did, however, when the matter was under discussion refer them to a report made to me by Mr. Diericx at the time of my employment, in which that proviso was contained*—(The witness is here interrupted by an objection.)—together with the further statement showing clearly that the proviso referred to the possible nonremoval of the crankshaft. I asked Mr. Gardner if he had that report in his possession, or a copy of it, and he said he thought he did have it.”

Now, what does this explanation show? It shows that Mr. McClanahan received a report from Mr. *Diericx*, the assistant manager of the company, in which the contract was stated in the terms contained in the proviso, but which report the witness said also contained other statements showing that the proviso referred to the possible nonremoval of the crankshaft, and that report the witness traces into the hands of Mr. Gardner. It was given to Mr. McClanahan at the time of his employment, which certainly was before the filing of the libel, namely, *March 7th, 1910*. On *November 4th, 1911*, Mr. McClanahan suggested the redrafting of that letter in the form above indicated, by which

the portion of the proviso which states the contract in the terms we contend for, *is eliminated*, notwithstanding that portion of the proviso *was in the report*. He not only eliminates it, but he *substitutes* the crankshaft contention on his *bare recollection* of the contents of the report delivered to him more than a year and one-half before. Furthermore, while he says he asked Mr. Gardner if he had that report in his possession, or a copy of it, and Gardner said *he thought he did have it*, yet Mr. Gardner, who that same afternoon is placed on the stand, *is not asked to produce it or to account for it*.

Under these circumstances may it not, in all fairness, be presumed that Mr. McClanahan's recollection that the report contained "a further statement showing clearly that the proviso referred to the possible nonremoval of the crankshaft" is at fault? Particularly, when we find the experts not only make no mention of such "further proviso", but also change their letter by also striking out (page 2681) the words "as per original contract" and inserting in place thereof the words "in the removal of the crankshaft", when giving their estimate of the "fair value" of the "benefits coming to the steamship company", and, at the same time, *change the amount of the estimate from \$1039.25 to \$1398.25*.

So, also, if there were such a further statement why eliminate the very suggestive proviso? Why not let that remain and *add* the qualifying statements? Again, *why change the report at all?* It was a report to the *Matson Co.*, who, if the statement were not correct

would not be misled thereby. Must we not infer that it was anticipated that the report would be called for in the examination of the experts and that the change was made for the eye of the libelant rather than for the eye of the respondent?

But this explanation makes plain another thing. Mr. Diericx made a report to Mr. McClanahan at the time of the latter's employment, in which that proviso was contained. Of course, Mr. Diericx could only have received the information contained in that proviso from Captain Matson or Captain Saunders or both. *So we find in it, a memorandum of their recollection of the agreement made when it was yet clear in their minds, and before the new contention was born.*

The new contention found expression in the testimony of Captain Matson and Captain Saunders on *October 30th, 1911*. The change indicated was made in the above letter for the purpose of Mr. Heyneman's testimony, on *November 4th, 1911*.

Can anything be more convincing than this circumstance as to what the true nature of the agreement was between the parties? Nor do we wonder at the solicitude expressed, at the time of its production, that it should not go into the record.

With this before us, let us turn for a moment to respondent's argument upon this subject (brief, pages 133-158).

He begins with the proposition that if he can prove *the acceptance* of the bid, he has taken the "first step in the complete destruction of libelant's

*quantum meruit* case''. To this end he gives excerpts from the testimony of Captain Matson and Captain Saunders, whom he says, with the exception of Mr. Gray were the only parties present. He then attempts to fortify it by testimony of Mr. Klitgard, who was not present but met Gray coming out, to whom the latter said "He had got the work". "I think his words were 'we have got the job'," which is followed up with the following interrogatories.

"Q. Do you know what he referred to?

A. Surely.

Q. What was it?

A. There was only one job in question, the specifications.

Q. What was the job? A. *A contract job.*

Q. A contract on the Hilonian?

A. Yes, sir'' (VI, 1920-1922).

No comment is necessary upon this forced interpretation by a witness, who was not present *at the conference*, of the language of Mr. Gray when he said "We have got the job'', into an admission that Gray had entered into a contract to do the work for a fixed price, subject to a reduction if the crankshaft did not come out.

Comment is made upon the fact that on direct examination we did not ask Mr. Gray "a single question that would call for a direct contradiction of Matson and Saunders' testimony on this point of the *acceptance* of the bid of August 2nd, 1909''. But what need of asking the witness for a legal conclusion. We asked him *for the conversations* that passed between them and directed his attention to the only



material fact in dispute, namely, conversations with respect to a reduction in the bid if the crankshaft did not come out of the vessel.

Again, we take it, that the fact that the testimony in question was brought out from the witness *on cross-examination*, rather than on the direct examination, is not only under the rules of evidence, but of common sense, an added badge of its verity. The characterization by respondent of that testimony as the "confused and contradictory position taken by this witness on this point when it is left to the cross-examiner to bring it out" (brief, page 140) does not in anywise impair its strength.

Much space is devoted to a consideration of what the contract was, and criticism is offered of the attitude of the witnesses, and incidentally of counsel for libelant, when, in the course of the examination, the witness is asked whether or no there was a "contract" for this work. Now, whether or no there be a contract is a question of law, to be determined by the Court from what was said and done by the parties at the time the same was entered into. More important still is the question as to what the nature of the contract was. Colloquially speaking, a contract is an agreement to do a specified piece of work for a fixed sum, but legally speaking any agreement is a contract, whether it be an agreement for a fixed sum or to do the work on a *quantum meruit*, and the question, in this case, was which of those two agreements was the one entered into by the parties. Between them, none but lawyers distinguished. It was, therefore, unfair to attempt to force a lay-

man, by asking him, "do you consider there was a contract in this case", to determine that question of law, for which he was unqualified, and afterwards to apply his general answer "There was or there was not" to either of the two conditions above referred to which might best suit the purpose of counsel's argument.

We therefore attempted to confine respondent to the <sup>Conversation</sup> ~~evidence~~ of the contracting parties, and to what was said and what passed between them, so that the Court might determine for itself the nature of the contract.

Respondent's examination, on the contrary, was an attempt to make the witnesses say there was a "contract" rather than to ascertain from them what the conversations were upon which the conclusion is based that there was a contract. Neither do we think that, with all the art and skill of counsel directed to that end, the witness's testimony is at all confused or contradictory upon this subject. He has plainly and persistently denied that the bid was accepted and has plainly given the details of the conversations which proves the agreement to have been for work on a time and material basis, conforming in every respect to the proviso stricken from the report above referred to by the experts.

In further detail we call attention to the testimony quoted in appellant's brief from the bottom of page 142 to the middle of page 144, which could not be plainer and which fully states the situation as we understand it.

To the quotations on pages 146 and 147 of appellant's brief, we desire to add the part of the proceedings which the brief omits and which illustrates what we have said concerning the nature of that examination. The record is as follows:

"Q. Now, Mr. Gray, we are not to take you as occupying the attitude that has heretofore been occupied in this case by your associates, that there was no contract in this matter. You made a contract, did you not?

Mr. FRANK. One moment. I object to that. I object to that and I instruct the witness he need not answer a question of that sort. It is a conclusion of law, whether he made the contract or not. He has already told you that the proposition was submitted and the whole details of it, and that Captain Matson refused to accept it, and told him he would put a timekeeper on it, and he told you all the details about it. Now, whether that was a contract or not a contract, is what the Court will determine. This man is not a lawyer, nor is any witness called upon to——

Mr. McCLANAHAN. (Intg.) It is going to give somebody trouble.

Mr. FRANK. (continuing) To answer any legal questions.

Mr. McCLANAHAN. Please answer the question, Mr. Gray.

A. What is it?

Mr. FRANK. Read the question and my instruction to him.

(The last question and instruction of Mr. Frank repeated by the reporter.)

Mr. McCLANAHAN. Answer the question, Mr. Gray.

A. Well, I have answered that two or three times. It seems to me that I proposed to do a certain amount of work for a given sum, and Matson would not accept it, and he said he would

put a timekeeper on and see if he could not save himself some money; it seems to me that answers it. What more of an answer can you have.

Q. Then, Mr. Gray, you do maintain that you made no contract with Captain Matson?

A. That is not for me to judge. I cannot see where I come in on judging whether it was a contract or not.

Q. Aren't you the man that goes around and gets work under contract? A. Certainly.

Q. Can't you tell whether you made a contract with Matson or not? A. He turned it down.

Q. Then you take the position that you made no contract? A. He turned the contract down.

Q. You take the position, then, that there was no contract with Captain Matson?

Mr. FRANK. What difference is it what position he takes in this case? He has told you the whole story and the Court will determine whether he made a contract or not, if it is material. He has told you he put a timekeeper on——

Mr. McCLANAHAN. Do not encumber the record any more than you have to, Mr. Frank.

Mr. FRANK. You should not encumber the record by doing something that you know is not proper under the circumstances. You have got everything you can legally call for.

Mr. McCLANAHAN. Q. Answer the question, Mr. Gray.

Mr. FRANK. You do not have to answer the question; you have already answered it.

Mr. McCLANAHAN. Q. Answer the question, Mr. Gray.

Mr. FRANK. Take your instructions on that subject from me, not from Mr. McClanahan.

A. Then I refuse to answer it.

Mr. McCLANAHAN. I shall ask for judgment in this case unless that question is answered, and move that all the evidence of this witness be stricken out.



Mr. FRANK. On what ground?

Mr. McCLANAHAN. Upon the ground that he is a party to this action, and he is a man that submitted this bid, and he ought to know whether that bid was accepted or not.

Mr. FRANK. He has already told you that it was not accepted. He has answered your question. You are now asking him to characterize it as a contract or otherwise, and you can make any motion you desire, on those grounds.

Mr. McCLANAHAN. I have stated what I intend to do.

Mr. FRANK. Very well."

We add nothing to what appears in the record on this subject.

The rest of the brief relating to this subject (pages 149 to 158) is taken up with comments upon the testimony of Mr. Christy, who had nothing to do with the making of the contract; Mr. Klitgard who also had nothing to do with it; Mr. Siverson, a workman, who also had nothing to do with it and Mr. Curtis, who also had nothing to do with it.

It will be borne in mind that the contract for which respondent is contending consisted of two papers, namely, a specification and a bid. The attempt of the respondent in the examination of his witnesses was to fix upon them the recognition of the *specifications*, dissociated from the bid, as *the contract*, and to show that, because they were working on the specifications, therefore they recognized the job as a "contract job." The futility of this is apparent, for no one denies that the understanding of the parties was that the work was

to be done "in strict accordance with the specifications." The only controversy is whether or no the price for the work to be so done was fixed by the bid and its acceptance, or to be ascertained by reference to the cost of time and material, and throughout the examination of these witnesses an attempt is made, as it was with Mr. Gray above, to get them to use the expression "it was a contract," to which Mr. Klitgard, their own witness, very readily lends himself.

We need not, at this time, follow respondent in his comments upon the testimony of Mr. Christy, or any of the other witnesses. Not being parties to the transaction they would have no knowledge of what passed between the parties at the time of making the contract and the mere fact that they were working under a set of specifications does not in anywise refute Mr. Gray's testimony upon the subject.

**Discrepancy in the several specification exhibits.—**At this point, however, we desire to call attention to a very important discrepancy in the specifications, now presented as the specifications upon which the bid was made, from the specifications upon which the bid actually was made, because all of the testimony of the experts is founded upon the former specifications and not upon the latter.

The only specifications that the executive officers of the United had was respondent's Exhibit Christy "C" (Record, page 2654), which had the file number of their office in blue marked upon the top. We note that

this blue mark does not appear in the printed record and suggest an inspection of the original.

This specification and exhibit is identical with the specifications contained in the *answer* as Exhibit 1 (page 52). This fact is conclusive regarding the nature of the specifications *upon which the bid was made and under which the work was undertaken*. The specifications, however, *which are presented to the experts* and under which their work, is done, is respondent's Exhibit Saunder No. 1 (page 2639), which has an important addition in the last paragraph and an unimportant omission of the words "no less" at the end of the seventh paragraph. Neither are the copies of the specifications, which were furnished to the workmen for their guidance in the work (by some of them called a list of work) the same as that found in the record as Saunder's Exhibit 1. Liverson's Exhibit "A" (which should be "Siverson's") page 2658, is identical in its provisions with respondent's Exhibit "Christy 'C'", except that it has appended to it the direction to bidders.

The material change in Saunder's Exhibit 1, is the provision "all bulk-heads, gratings, bracings and pipes, etc., removed during period of overhauling to facilitate work must be properly replaced and secured and all machinery satisfactory reassembled before work will be considered completed".

It will be seen at a glance that this general provision includes a very considerable amount of work and labor and hence expense.



The work thus performed we contend is an extra outside of the specifications. The respondent contends it was included in the specifications. When the attention of Mr. Gardner, one of the experts, was called thereto, he filled in the gap by stating that that would be implied under Exhibit Christy "C". Aside, however, from the objection that the experts are not the proper parties to construe our contract, we have not only a provision which, if we treat the case as one of an accepted bid, was to be "in strict accordance with the specifications," but we have also this significant interpretation placed upon the specifications by the respondent himself, namely, his insertion of the provision *ex industria* in the set of specifications now contended for, showing that they did not consider it implied.

We say therefore, as additional answer to the contention of a contract for a specified sum as against a *quantum meruit*, that if the latter specifications are what was intended by the respondent, then the minds of the parties never met and the negotiations referred to did not constitute a contract.

We also at this time call attention to this discrepancy in its relation to the estimates of the alleged experts offered as the foundation of respondent's case so that we may not have to discuss it at length when we come to consider the value of their testimony.

In the foregoing we think we have satisfactorily established the fact that the agreement of the parties that the work mentioned in the specifications was to be done



in accordance with the specifications upon a time and material basis with \$11,749 as an upset price, and that the upset price was set aside by the changes and modifications in the specification work as it progressed.

We think, upon the whole, we have satisfactorily established that the contract thus entered into was set aside by the "omissions, modifications and changes in the specifications without an agreement as to their value", and that, hence, we are entitled to recover on a *quantum meruit*.

The only question that remains, is,

## II.

### WAS THE QUANTUM MERUIT SATISFACTORILY PROVEN?

This is based upon a record for time and material under the card system upon which the United depended for its entire accounting system, and the system seems to have met with the approval of the Circuit Court of Appeals of the 7th Circuit, as we shall presently see. No manufacturing establishment can be carried on without an accurate knowledge of its cost of production. As already suggested, this card system was not employed solely for the purpose of *making charges against customers* who dealt upon a time and material basis, but it was the basis upon which the United ascertained the cost of production, whether they were building upon *their own account*, or on contract or on *quantum meruit*. Every kind of work that went through the shop was recorded in this same manner (IV, pages 1425-1431). It is un-

fair, therefor, for the respondent to contend, as he does, that this "detail was one affecting the pocketbook of the customer and not the libelant" and that "it mattered not, in the selection of his workmen, whether they were competent or incompetent, careful or reckless, fast or slow, old or young, deaf, dumb or blind." The inherent exaggeration of this statement condemns the entire contention. The suggestion that the slow and incompetent man is more profitable because he consumes a greater number of hours, is of a piece of this exaggeration and only one of the innumerable unfair statements contained in that argument. The record in this case shows conclusively that this particular job was being hastened with all the vigor that the United possessed; that it was limited as to time, and was a "rush job"; that there was other work in progress, during that time, which had to be abandoned and the men transferred to the Hilonian job (1288). What incentive could there be to increase the expense of this particular work when we had more work in the yards than we could perform? With all the men employed to their capacity, why would the United reduce their capacity?

So, too, with the statement that the libelant was unwilling to accept the unverified statement of employees of its own selection as to the aggregate number of hours each day, but insisted that the *respondent* accept such unverified statement: "that libelant takes due precaution against possible errors of omission or commission on the part of its workmen as they affect *it*, but when

it comes to the protection of the *customer* against the same vice that *is another matter*'' (page 16).

No reference is made to anything in the record justifying this remark. The only authority for it is the respondent's spleen and determination to build up a case upon misrepresentations. The record is clear that there was but one method of ascertaining the cost at the works, which was applied indiscriminately to all kinds of work, and was carefully and diligently checked and rechecked to insure its correctness within the limits of human error.

Respondent's answer to this fact is again characteristic. He says: "Our answer is that, if it be to the advantage of the libelant, from a financial standpoint, to be indifferent as to one class of work and vigilant as to the other, then assuredly *it would not be an unwise guess to predict the course that would probably be followed*. It may be the rule of the shop to refrain from informing the workmen that a certain job number represented contract work, but *it would be stretching one's credulity* to say that such information was not imparted to the foreman on the work. We have in mind that assistant foreman Adamson in some cases, had that 'detail'."

What kind of a man is it, whose "incredulity" is of that nature!

Indeed, it is astonishing that the respondent, after ten years of business relations with these men, working amicably and satisfactorily upon the same lines, suddenly finds that the entire works, including the

owner, foreman and workmen is one nest of *conspirators against its customers*.

It is needless to follow respondent through this line of argument. He gives no credit to anyone for common honesty. He indulges in nothing but unfavorable inferences and is thoroughly malignant throughout. No one, approaching the subject calmly, can do otherwise than feel that the defense set up against the methods of the United, in the manner of keeping these records, is the product of an intemperate mind.

The fairness and earnest desire of the United to meet its adversary upon a fair business basis is rendered certain by the record. Having a customer with whom it had done business amicably for years it naturally desires to retain that business. As already indicated, when the dispute first arose, it offered to check the matter up with the respondent and again when entering upon its proof it repeated the offer, which in both cases was declined. Before the pleadings were settled it endeavored to secure, from respondent, a statement of the things admitted, so that the controversy might be narrowed down to the things it disputed, but respondent resorted to technicalities to avoid fairly meeting the issue. It proceeds in the same line respecting its claims of alleged error in the time cards. After all of the United's detail, as shown by its cards, had passed into the possession of respondent, we find on the last day, the respondent making covert suggestions as to errors and omissions claimed by it to be disclosed by that record, without furnishing the United with any of



the details. When the United requested the respondent to point out the detail, wherein it claimed there was error, so that, if open to explanation, it might be explained, the respondent flatly and absolutely refuses, saying, that they decline to give us the benefit of their work upon the record. Counsel, at that time, made the impudent suggestion "that before he did such a thing he had better send in a bill to the United for a retainer"; and *until the brief was filed on this appeal* that detail was absolutely withheld.

Let us for a moment consult the record upon this matter.

At the bottom of page 1616, Vol. V, on the cross examination of Mr. Curtis, the last witness, a question is asked:

"Q. I understand Mr. Curtis that none of the work performed under special contracts appears in Schedule 1?

A. No, we checked it each day to the best of our ability and on both sides we kept a perfect check on it and there was every effort to keep it straight.

Q. So that if there is such work, there is an inadvertence?

A. Well, I don't know how that could be because checking it over when the work is fresh in the men's mind and anything that would come up that there was any doubt about would certainly be eliminated at the time.

Q. The men did not have anything to do with preparing Schedule 1, Mr. Curtis?

A. You are getting back to what I mean in preparing Schedule 1—you mean preparing Schedule 1?

Q. I mean this, that if there is any work appearing in Schedule 1 and should belong to and

does pertain to special contracts it appears there through an inadvertence and a mistake?

A. Well, now, I will tell you. You come back to the way the Schedule 1 is made up from reports and the different foremen, from the checking from the stock order cards and the checking of the time cards of the men that did the work every day, and I do not see, with a matter fresh in the minds of the men, where there could be anything belonging to special contracts charged in Schedule 1.

Q. I will reform my question. If there is any work set forth in the enumeration of work found in the first, second and third pages of Schedule 1, that is work belonging to special contracts, it is there through inadvertence?

Mr. FRANK. Mr. McClanahan, if there is anything there that does not belong there, you point it out to us and show us that we are wrong, and it certainly will be eliminated now just the same as it would be in the beginning when we offered to check up the work with you. We are entitled to know, if you have any criticism, the exact nature of the criticism, and this hidden and dark way of getting at it is not proper and is not fair. We contend that there is nothing in there of that nature, but if there is anything and you think there is anything in there, and will point it out to us and point out here on the examination, we would be very free to admit it if we find it to be correct.

Mr. McCLANAHAN. Q. Answer the question, Mr. Curtis."

We do not intend to transfer to this brief the entire testimony, but only make such excerpts as will place the Court in possession of the point under consideration. The record from where we have just left off up to page 1655 gives the details.

On page 1623, the question is again asked:

"Q. If you have introduced in this case any time cards covering, clearly covering, contract

work, that is an inadvertence, is it? A. Time cards.

Mr. FRANK. What is the use, we cannot understand that, I think the law will presume that it is an inadvertence, unless you prove that we attempted to commit a fraud on you. The object of that kind of examination I cannot understand. If you were in Court you would not be permitted to do this thing for a minute.

Mr. McCLANAHAN. Q. Answer the question. Mr. Frank is through with his discussion."

Again (page 1642), Mr. McClanahan having asked to be favored with our copy of the circulating pump contract, said:

"The purpose of this request is this; we shall contend that in the balance sued for in this suit there is work included covered by these respective contracts.

Mr. FRANK. You should point out the work that is included. We have a right to have that pointed out so as to give us an opportunity for explanation.

Mr. McCLANAHAN. That is outside of the present matter."

The controversy, thus running through the examination, culminated at the end of the examination of the witness (page 1649):

"Mr. McCLANAHAN. That is the end of my cross-examination.

Mr. FRANK. Now, Mr. McClanahan, before we begin in redirect examination, you have made certain suggestions in your cross-examination of certain time cards, or stock cards, bearing numbers which you claim should not be charged in the bill, without specifying what the cards were. I demand now, that you specify the particular cards to which you object, in order that we may be able to examine them and explain them, if they need an explanation whatsoever. You have not specified any of them.

Mr. McCLANAHAN. I decline to furnish to the libellant any fruits of my efforts in examining and segregating the evidence produced by the libellant in this case.

Mr. FRANK. Do you claim that there are cards of the nature which has been covertly suggested in your cross-examination?

Mr. McCLANAHAN. I do.

Mr. FRANK. Then we demand a specification of them in all fairness, that we may be able to examine them and explain them, if they are open to explanation.

Mr. McCLANAHAN. The compliance which you request, if I felt so disposed to comply with it, would entail much labor and I do not care to comply with it.

Mr. FRANK. Very well. Then we will adjourn and refer that to the Court, and see whether you can make those covert charges without giving us an opportunity of meeting them.

Mr. McCLANAHAN. Mr. Frank, this adjournment of the Court is a very serious business with me. Time is the essence of my present engagements.

Mr. FRANK. So it is of mine. I believe I have as many engagements as you have, but I think we are entitled to fair play in this case.

Mr. McCLANAHAN. You are getting fair play in this case.

Mr. FRANK. No, we are not.

Mr. McCLANAHAN. You should know your case, and the exhibits and the evidence you have introduced better than I should. You should know what I know and perhaps more than I know. If I am to examine your case for you so as to enable you to whip it into shape I had better send in for a retainer to the United Engineering Works.

Mr. FRANK. What we should know and what we do know is one thing. We cannot know what you claim, and most undoubtedly wrongly claim to be an incorporation into the bill of charges shown by cards that should not be charged in there. We have



a perfect right to be apprised of it as we have of anything else, so that we may fairly meet it in this case, and not be delegated to an unnecessary controversy hereafter. You should put your case in fairly.

Mr. McCLANAHAN. All of the proof of your case has been presented by you. You should know what it is. You should know that there is not, or that there is, such evidence as I have suggested. If you claim there is not, it is a matter of issue between us to be threshed out on the argument of the case.

Mr. FRANK. If you claim there is, it is up to you to point it out.

Mr. McCLANAHAN. I will do so on the argument of the case.

Mr. FRANK. No. It is up to you to point it out now. Your claim may be ill-founded and be open to explanation by the testimony which would be beyond the reach of counsel on the argument.

Mr. McCLANAHAN. We need not discuss it. I decline to do it.

Mr. FRANK. Very well. We will see what the Court has to say about it. If it says you do not have to do it we will go on.

Mr. McCLANAHAN. Why cannot you go on with Mr. Curtis now and get rid of him except on that point?

Mr. FRANK. That point is very material at the present time. I see very little in your cross-examination outside of that that would require me to examine Mr. Curtis on.

Mr. McCLANAHAN. Well, then, just say that you have no redirect except on that point and let us proceed.

Mr. FRANK. Are you running me again, Mr. McClanahan.

Mr. McCLANAHAN. I am making suggestions; yes.

\* \* \* \* \*

Mr. FRANK. Now, Mr. McClanahan, I think we had better refer this matter to the Court. I pre-

sume 2 o'clock would be a convenient time for you to get the attention of the Court.

Mr. McCLANAHAN. Why cannot we go right up now?

Mr. FRANK. In the first place, I do not think we could get the attention of the Court now; in the next place, I want to get the particular part of the record to refer to the Court, written up, so that we may not waste its time, and present it intelligently.

Mr. McCLANAHAN. Suppose on investigation, Mr. Frank, we find that the Court is not available either today or tomorrow. I object to this case being halted on this ground. I am willing to have you conserve all your rights, but let us make progress. If this is your last witness, I am prepared to go on this afternoon at 2 o'clock with my case and we ought to do it. We have consumed a great deal of time in the case and to consume more unnecessary time it seems to me is uncalled for.

Mr. FRANK. How can it be unnecessary? You specify your cards and that is the end of the controversy.

Mr. McCLANAHAN. I decline to do that. I am willing to have you conserve your rights and take this matter up before the Court at some convenient time, and in ~~your~~ case you are sustained in your contention, to continue your redirect examination with Mr. Curtis. But my point is do not let us delay the progress of the case.

Mr. FRANK. Very well.

Mr. McCLANAHAN. Subject to your right to do that, and subject to your right of further redirect examination of Mr. Curtis, let me begin to put in my case.

Mr. FRANK. That satisfies me, and we will adjourn this matter of going before the Court to some other time.

Mr. McCLANAHAN. That is it exactly. If he is your last witness it is understood that you close your case with that exception.

Mr. FRANK. Or anything that may transpire in reference to his examination that makes it necessary for me to go further.

Mr. McCLANAHAN. On the point in controversy.

Mr. FRANK. Anything that may arise on the further or cross or redirect examinations.

Mr. McCLANAHAN. Yes, subject to that you close.

Mr. FRANK. Yes.

Mr. McCLANAHAN. And we will go on at 2 o'clock at my office.

(A recess was here taken until 2 P. M.)

#### AFTERNOON SESSION.

(An adjournment was here taken at the request of the respondent until tomorrow, Saturday, October 28th, 1911, at 10 A. M.)

Saturday, October 28th, 1911.

(An adjournment was here taken at the request of the respondent until Monday, October 30th, 1911, at 10 A. M.)"

That controversy, in which respondent expressed himself as so anxious to save time and go on with his case at 2 o'clock, being ended, the record shows that, at his request, two further adjournments were taken.

The matter was not referred to the Court for its decision. The reason for this we do not recall, but it was evidently lost sight of because of difficulty in securing a time convenient to the Court to take up such controversy.

It will be noted, too, that, in his present contention, the object of respondent is not to have his claimed *errors corrected* in the bill *by eliminating the instances in which he* claims there is a double charge, but he adopts a method which he thinks will have a psychological effect in moving the Court to entirely disregard the time and



material cards as untrustworthy. He says, "our list does not pretend to be complete" (pages 57-8). "The list is of such magnitude that we have thought best to place it in this brief as an appendix (see Appendix I.) and because the instances of these irregular charges are so numerous we submit that they cannot be explained on the theory of a mistake or an oversight" (page 58).

Again, referring to a similar matter, he says, "While the size of the record forbids an exhaustive examination we have made a *cursory one*, which we believe sufficiently establishes our claim that the situation referred to exists" (page 64). Again, notwithstanding he has already said that the alleged errors "cannot be explained on the theory of a mistake or oversight," he says (page 67). "If this is the situation affecting one of the admitted contracts, there can be no reason for believing otherwise than that a minute examination of all of these hundreds of material cards would reveal a similar situation respecting all of the contracts. We disclaim any intention of charging premeditated wrong on the part of the libelant, for our attack is intended to point out the mistake of counsel in attempting to depend upon proof so loose and palpably unbusinesslike as were these time and material cards used by the libelant."

His disclaimer of intention of charging premeditated wrong does not in anywise fit in with the many direct charges he makes of that nature. The suggestion that he has not made "an exhaustive examination," but that his examination was a "cursory one," is, of course, an attempt to add weight to what he claims to have pointed out. His diligence, however, in raising these objections



is so apparent that we think it fair to infer that he has called attention to all that he could "invent." He is certainly not entitled to be credited with "errors" that he fails to point out. We shall presently see how palpably unfounded those objections are.

We have already said that this criticism is not directed to having the bill *corrected* and the reason is apparent, for, if he were to receive credit upon the bill for the instances in which he claims that improper charges were made against him, the amount of the credit would be so insignificant that it would make his contention of "hopeless error" ridiculous. Taking his Appendix I., for instance, he enumerates 113 instances of alleged error in Schedule 1. We will hereafter show that some of those 113 alleged instances are not charged at all in Schedule 1, but only appear upon the cards because other proper charges appear upon the same card. We therefore could not throw out the cards, we could only throw out that particular charge. That was done in making up Schedule 1. It will also be borne in mind that the instance in which he claims there are double charges are not in fact double charges, as we shall hereafter indicate. This matter is treated in our Appendix 2 *post*.

However, assume for the present that they are double charges. Out of, as he says, "thousands of cards," he finds 113 instances. The entire time included in those 113 instances, putting it at the extreme, amounts to \$602. This can be verified by checking it against our Appendix No. I *post*. This amount in bill of \$30,000 odd

would not be serious enough to cause the entire proof to be disregarded.

We do not know how carefully this Court will be able to examine into these details, but we have the assurance of the District Court that he has given "careful consideration to the voluminous record" and that "while the manner of keeping the accounts of the different men engaged in the work and of the different articles furnished is somewhat complicated, I think that, with the exception now to be noted, the account as stated in Schedule 1, 2 and 3 of the libel is correct" (page 2596).

However, so that this Court, if it deem it necessary, may follow these cards *seriatim* to ascertain their verity, we have added, as Appendix I of this brief, a detail of each card introduced, showing the name of the employee, his shop number and his classification, together with the day and the hours worked by him, and the entire matter carried through to the end, with a summary of the number of hours worked upon the job for each classification of workmen.

There can be no dispute with respect to the manner in which these cards were finally prepared as a record.

Let us take, as an illustration, the case of the machine shop, presided over by Mr. Adamson, concerning which so much is said in the brief.

Mr. Adamson was not the foreman of the machine shop at that time, but was an *assistant* foreman, (V. I, page 302). It is safe to assume that when a man specializes upon a particular kind of work, if he be a man of intelligence and capacity, as Mr. Adamson un-

doubtedly was, he becomes expert in the things necessary to carry it on.

Much comment is made in the brief about not appointing men specially to take care of this time. Apparently the fact is overlooked that that was *the very office that Mr. Adamson fulfilled*. Previous to the appointment of Mr. Adamson, Mr. Doig, the foreman, had been keeping time on these men (page 339). Mr. Adamson's position as assistant foreman *was created for the very purpose of keeping said time*.

“Q. What was the occasion of making the change? \* \* \*

A. Because it was found that it was too much for one man to keep track of all the numbers and check the jobs that came in and oversee the work being done at the same time.

Q. When you say ‘keep track of all the numbers’ do you mean keep track of all the——

(Intg. by an objection.)

A. I mean by seeing that the proper number was put on each job as it came into the shop.

Mr. FRANK. Q. How about keeping the proper time of the man?

A. And that the proper time was checked off that was put on that job every day.

Q. By the men? A. No, sir, by me.

Q. I do not mean checked off by the men, I mean the proper time that each man put on the job was checked off?

A. That was my duty to see that these men's time was properly put down and that it was properly checked and the time they put on each job.

Q. In other words, the duty of keeping the time of the men on each job was the duty that was assigned to you?

A. That was assigned to me; *this position that I held at that time was created absolutely for the*



*purpose of keeping the proper time on the separate jobs as they came into the shops, and check off the time that was put on each job.*

Q. You said something about a place table being put into the shop at that time. A. Yes, sir.

Q. What was the purpose of that place table?

A. So that I could *lay off* all the work on any job that came into the shop, and so that I could be handy right at the door where the jobs were landed, and my attention was drawn to the job as it was put down, and it was my duty to find the proper numbers of that job and paint it on with white paint before it left my table. \* \* \*

Q. And then you took it, and did what with it?

A. It was assigned to the man who was to work on it.

Q. Who assigned it?

A. I drew the foreman's attention to it and if he could not take the job at the time he told me who to give it to.

Q. Then what did you do—give it to the man?

A. Yes, sir, who was to work on the job.

Q. And take his time? A. And take his time" (pages 339-40-41).

In other departments where less men were employed, the foreman kept the time. On the ship both foremen and Putzar kept the time.

In addition to this each man kept his own time, some by noting the time they received the work and the time they finished the work upon their machine, others by noting it upon a separate piece of paper and others by making mental note of it, and these notes were transferred to the card in the evening at the conclusion of their work.

The card was then turned into Adamson and by him turned into the office. The next morning, the first thing,



Adamson went into the office and checked the time so entered by the men by their cards with his own recollection of their time. Respondent declares that Mr. Adamson's ability to do this "leads one into the realm of things 'phenomenal'" and "is preposterously absurd." Of course these adjectives mean nothing. Not only does respondent assume that Adamson's duties were more numerous than they in fact were, but he also ignores the fact that this matter of time was the man's special duty, it was the matter for which his position was created and for which he was specially employed, as shown from the foregoing citation from his testimony. With this fact in mind there is nothing phenomenal or preposterously absurd about his ability to accomplish it. It is the every day experience in practical affairs of life with respect to men who specialize upon a certain thing. Moreover, the adjectives lose their force when we consider that that method was continued at the works right up to the time that the witness was testifying, and gave satisfactory results. As we have already suggested, the very existence of the institution depends upon its practical accuracy, for without it the United would not be able to ascertain its cost of production and anyone who has the slightest knowledge of a manufacturing industry knows that it cannot be carried on, on such a scale as the United's business, without that data being accurate.

The fact that some of the men working on the machine were not able to do the same thing, argues nothing to the contrary, for not only were they not men of the

same intelligence as Adamson, but also they were not specializing as he was upon that particular thing.

The instances given to illustrate the fact of the "calibre of Adamson's mind" would not at all warrant the inference attempted to be drawn therefrom. Not only did they refer to matters occurring two years before the witness was called upon to testify respecting them, but they were also not matters upon which his attention was riveted as was the matter now under consideration.

We think, however, that a reading of his testimony would convince any impartial observer that the "calibre" of his mind was good.

At the time that Adamson checked up these cards, his mind was fresh upon the subject that was his particular duty. And the cards indicate the *corrections* that were then made of errors on the part of the *men* in making their entries. In making these corrections his memory was assisted by special inquiry made at the time into the detail affecting the things that he conceived to be errors. It was further assisted by the rechecking of the same cards by Mr. Curtis, who followed his work. Although Mr. Curtis would have no personal knowledge of the length of time of the individual workmen were employed upon a particular job, he had the whole job under supervision, followed it closely from day to day and himself went with the cards, in case of doubt, into the shops, consulted the men and consulted the piece itself upon which work was performed in order to insure the accuracy of the record, and in doing this he was fol-

lowing out the purpose of his own employment as the head man upon whom rested the responsibility of obtaining the record upon which the United depended for its own knowledge of the cost of production. For this, respondent attempts to cast slur upon him as the "chief clerk" who injected "himself into the minute and detailed business of his employer" (brief, p. 80).

Comment is also made, occupying several pages of the brief, upon the fact that there were days in which Adamson was not present at the shop and there was work during the night hours when he was also absent.

So far as night work is concerned, there would be very little trouble in Adamson following it. He was an expert workman, otherwise he could not be assistant foreman. The night work of these men would in general be confined to a particular piece of work which Adamson laid out for the men before leaving the shop. As he himself testifies, and as any reasonable man must conceive, from his experience he would have a reasonably accurate knowledge of the length of time it would take to complete that piece of work, and, when he consulted the entry of the men's time in the morning, he would know with reasonable accuracy whether or no it was correct. He then had the same facility and probably more incentive to make direct inquiry into the matter by entering the shops for that purpose and verifying the entry.

However, apprehending the question that would be raised by respondent respecting this time as well as the time that Adamson was absent from the works we took



the precaution to *specially call the particular men who had worked upon the Hilonian job during the time that Adamson was so absent* and to have them testify directly with respect to that particular time. Upon the testimony of these men, respondent has no particular comment to make, except to indicate the manner in which they kept track of their time. Some of them did it mentally, some of them used a slate, some of them a piece of paper, some of them a time card and some of them a private book, but we submit these facts do not impugn the accuracy of the records they made.

It is, however, suggested that their testimony affects the credibility of Adamson, because some of these men testified that they passed their card into the timekeeper, and respondent assumes that therefore Adamson did not check them, but the timekeeper checked them. Adamson has directly testified that he did this checking *in conjunction* with the timekeeper, while the men themselves were never in the office during this process of checking, but in the shop at their work. An examination of their testimony, upon this subject, will disclose that what they said, in that respect, was their mere inference or assumptions, and not from any personal knowledge. It does not, however, in anywise tend to discredit Adamson, who was testifying as to what he himself did, of which they knew little or nothing. For confirmance of this, we refer to the other pages of the testimony referred to in respondent's brief on page 51 thereof. For instance, Stimel says, when asked who would call his attention to mistakes, "The timekeeper would call my attention. *He would call the foreman's attention*



and the foreman would call me to him and then I would have to find the regular time." All he knew of his own knowledge was that the foreman called him (meaning Adamson). As to who called Adamson's attention to the error is only an inference. So again on page 21 and 22:

"Q. Then I suppose if there was any mistake the next day the timekeeper would call your attention to it?

A. He calls the foreman's attention to it and the foreman calls us."

So too with Wilson, whose testimony is quoted on page 80 of the brief; but immediately preceding, on page 79, when he is asked concerning what he did with his cards, he says he placed them in the box.

"Q. Do you know where they went to from the box?

A. To the timekeeper *I should surmise*, in the office.

Q. Do you know? A. I cannot say anything else."

It will be noted right here that this examination, by respondent, is intended to show that Adamson did not check the cards *before they went into the office*. He does not claim that he did, his testimony was that he went into the office the next morning and checked them there in the presence of the timekeeper.

So with Mokel, page 805:

"Q. Nobody checks your time except yourself?

A. Myself, that is all, before I hand them in.

Q. When you handed it in, it passed to the office? A. Yes."

When asked respecting the change or correction made in red ink, he says: The timekeeper would come to him and together they would go over the piece of work and find what the number was. That they would talk it over and he told him that he had a mistake, he would show him everything “and then we decided that I have made a mistake in getting down *the numbers*.”

This does not exclude the proposition that the timekeeper's attention was called to it by Adamson, before the latter had his interview with the workmen for the purpose of verifying Adamson's opinion. It will also be noted that this refers only to a mistake in a job number, and *not to the hours worked*. The timekeeper would have a knowledge of the job numbers as well as Adamson, for those job numbers came to Adamson from the timekeeper.

So with Thomas (Vol. III, page 789). He says he dropped his card in the box at the timekeeper's office.

“Q. What became of the time after that?

A. The foreman went over it *I believe*, and checked the time to see if it was correct and the timekeeper also *I believe*.

Q. You do not know anything about that, do you? A. No, sir.”

After an attempt, on page 790, to exclude the foreman from the examination, the matter culminates on page 791 with the following answer:

“Q. No one but yourself knows how much time you put on each particular job?

A. *The foreman would know who gave us the work, he would naturally know how much time were spent on it.*”

So with Schafer (Vol. III, pages 796, 797). This witness testifies:

“Q. Nobody keeps track of your time while you are working, except yourself?

A. Yes, and the timekeeper and the foreman.”

And he is led to say that the foreman is David Doig. On the next page, however (page 198), he says he does not know if Robert Adamson was acting at this time. He had been in Europe fourteen months and could not remember

“if he had charge of those books then or not. David Doig did that before Mr. Adamson did it. It may be that Mr. Adamson did that at this time when we was working on the Hilonian.”

So with Muller (page 844):

“Q. No one looked over them to see if there was any mistakes? A. They did look over them, yes.

Q. Who does? A. Mr. Adamson at the time.

Q. At the time? A. Yes, sir.”

He further says that he turned them into the office and that he was told that Adamson looks them over, and he goes on to show how corrections are made.

So with Young (page 854):

“Q. Nobody checks over your time, do they?

A. Not so far as I know.”

So with Mr. Boyer (page 896):

“The timekeeper makes the change; he came around in the morning and made the change, *I think.*”

If the foregoing is evidence that "it was the timekeeper and not Adamson who made these corrections when there were found mistakes in the time," so as to contradict Adamson's testimony that in the morning he went into the timekeeper's office and checked up the cards, we fail to appreciate it.

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ADAMSON'S PERSONAL CARDS OF AUGUST 25th, 26th,  
SEPTEMBER 7th AND 18th.

Comment is made upon the fact that these cards were not produced, though it is admitted that Adamson was at work in the shop on these days as it is shown by his clock card. It is contended that, inasmuch as Adamson identified the cards of the men who worked on that day, the nonproduction of his *own personal* card leads to the inference that Adamson himself did not work *on Hilonian work* on those days, and it is argued that if he did not work on Hilonian work himself he had no means of keeping track of men who did work on Hilonian work. It is suggested that it was *solely* because of his personal handling of Hilonian work, marking it off on the surface table and thereafter turning it over to the men, that gave him the opportunity for the supervision which he claimed.

In the first place this latter statement is not the fact. The surface table was used for numbering the jobs *as they came into the shop*. After it had passed the surface table in this manner the work might remain in the shop for several days and, if respondent's inference were true, Adamson would not have track of the work



beyond the first day nor even track of the work as it changed hands in the shop during that day. This contention, as to his means of keeping track of the work, is based upon a single sentence in the testimony and closes its eye to the further statement that, keeping track of the men's time was the special business of Adamson, the very purpose for which he was appointed, and the surface table was only referred to as one of the means to that end (Vol. II, page 340). Take, for instance, the example of the craneman included in the list mentioned by respondent. He handles the pieces in the shop from time to time as they are being worked on by the machinists. If respondent's contention were true, Adamson would have no means of keeping the craneman's time. But he did, in fact, keep his time.

If Mr. Adamson had means, independent of the surface table, of keeping track of the time in the shop, the entire purpose of respondent's calling attention to these cards has failed.

However, if the "Hilonian" work upon which these men were working on those particular days, was work that had been laid off the day previous, and of such magnitude as would occupy the entire day, Adamson would have no occasion to enter, on his own card, time against that work until it was finished, as no appreciable part of Adamson's time would be occupied in taking note of time when the workmen quit, and from a practical standpoint, that would not reasonably permit of time being charged. This is quite as reasonable as any inference respondent attempts to draw.

On the other hand, there are about 1200 cards introduced in evidence here, which have been selected and segregated from many thousands. That four cards, that should not have been discarded, or destroyed, should have been lost in this segregation, is not at all remarkable. Neither is it remarkable that no explanation of the failure to produce, appears upon the record, for the controversy took place on August 25th, and the libelant's case was concluded upon October 27th (pages 1654-55). Without doubt, owing to the multiplicity of matters occupying the libelant in the prosecution of the case during that time, the explanation was forgotten; for it will not be assumed that otherwise the libelant would not have offered *some explanation*, even if "counsel" had "not dared to give" the one suggested by the respondent.

The contention is also made that, if Adamson's cards show "*Hilonian*" work, then the bill is *incorrect to the extent of the value of the unknown number of hours that Adamson worked*, as shown by these withheld cards. Of course, that is not a matter of complaint for the *respondent*, because, if incorrect in that respect, *the error is in respondent's favor*, and the loss is the loss of the United—those hours not being charged in the bill.

It is not contended that the time of the men mentioned on page 43 of the brief was not proven, for it will be remembered that a large number of Adamson's exhibits were resubmitted to the men themselves, to prove their verity both with respect to overtime, night

work, and work covered by the dates mentioned. We make this suggestion now, so that the Court will not be led into error with respect to the men's time.

We might pass the statement that "counsel dared not give that as a reason for their non-production"—referring to the fact that the cards contained no charge against the "Hilonian"—with the suggestion that we cannot blame respondent for judging of our motives by his own standard. We can only point to the fact that their transactions disclosed by the record, forbid our being placed upon the same footing.

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**THE ALLOWANCE OF NINE HOURS FOR SHOP WORK WHEN  
BUT 8½ HOURS OF WORK WAS ACTUALLY PERFORMED.**

The contention of respondent upon this subject is again an evidence of his unfairness in his treatment of the case. Not only does he make use of it in his attempt to discredit our timekeeping, but he also, with full knowledge that he is adopting improper rates, uses the price set opposite the time in Schedule 1 as the proper price of the labor, *when applied to the hours actually worked*, and says that, in the figures of his experts they "adopted libelant's *own rates* for the same, as shown in its bill" (brief, page 186).

The reason for this extra allowance of time is plainly set forth in the testimony, and uncontradicted (Hough, Vol. IV, pages 1348-1352). But respondent calls it a "palpably inequable overcharge," and says it arises from an agreement

between respondent and the labor unions, by which the respondent was obliged to pay its workmen in that manner. It would seem, if the United were obliged to pay its workmen in that manner, the extra charge is an element in the cost of the production of the article worked upon, and if it cost us that much to produce it, it certainly is chargeable against the customer, when working on a "time and material" job.

He then suggests that "counsel designates" this agreement as a *custom*, and that the custom was not known to the Matson Navigation Company. That it is the general custom applying to all iron works around the Bay engaged in the business, is established by the record without dispute (III, p. 919). To say that the Matson Navigation *Company* did not know it, because one of its officers testifies that he did not know it, is ridiculous. Before this job, respondent had been having work done covering a long period of time in which bills so charged had never been disputed, and Mr. Curtis testifies that this method of charging was explained to his timekeeper when the latter went upon the job.

But aside from the question of "custom," we contend that the reasonable value of a piece of work is what it costs to perform it at the time and place it is performed, and all incidents that are common to those engaged in that class of work, which enhance the cost, become thereby an element in that reasonable value.

It is also suggested that the agreement is enforced against the respondent for non-union work, as well as union work, and this is based upon the fact that Dolan



said he was a non-union man. Perhaps in this connection, we might suggest *de minimus lex*. But there is no evidence that Dolan was paid on any other basis, on the contrary his time card shows that he was paid on exactly the same basis and the record shows it "was the rule of the shop" (III, page 920). No other conditions could obtain in the works; to do otherwise would foment internal strife and disorganization.

Then it is said that it is inequitable, because the extra time for which the men are paid includes overhead expenses, and a profit, and that each hour of unemployed labor billed to the shipowner gives the iron works not only reimbursement for what is paid the workmen, but also a fictitious profit, for which the shipowner receives no benefit. This is drawing the matter rather too fine. The profit that the iron works obtains from a given job is a gross amount; it is the difference between the cost of performing the work and the amount it receives. It is ascertained by taking the latter amount, and deducting therefrom a percentage for overhead expenses and the actual amount paid to the workmen and for the material. The amount that it is increased by the bonus to the workmen may be lost in the cost of the material and the necessarily imperfect determination of the overhead expenses applicable to the particular job. Such refinement in the practical affairs of life would make the carrying on of factories impossible, and we doubt if any Court would attempt to constitute itself a commission for the readjustment of the great industrial methods of accounting, upon the mere suggestion that it does not operate with machine-like precision.

Before such work is undertaken, an enormous amount of special knowledge upon the subject is necessary.

But, aside from this, the profit argument is not sound, because it assumes that the unemployed hours are paid for *at normal rates*, which is not the fact. *Unemployed hours are offset by a reduction in the rate per hour.* It is a mere method of accounting. We have two multiples that give a given result; one, the number of hours employed, the other, the rate. If you increase the number of hours employed, and decrease the rate, the result is the same as if you decrease the number of hours, and increase the rate correspondingly. So that, *the result being constant*, it is immaterial whether the hours so increased be employed, or unemployed. The profit lies only in the *result*, the gross sum, and not in either of the factors. Under the present arrangement, there is no profit in the *rate per hour*. For example, 10 hours at 65¢ is \$6.50, so also 8½ hours at .7644+ (running into tenths of a mill), is also \$6.50, but what a wage rate to keep books on! The profit is in the \$6.50 in both cases.

Then again it is said that there was no governing rule as to how this unemployed period of time was to be divided in cases where several job numbers were operated on in one day, and that this is "*also fatal to libelant's case*" (page 56). It is really wonderful how many fatalities the libelant was confronted with, which the District Court failed to regard as fatalities.

The Court will notice that many, if not the majority of the cards in question carry as many as four different

job numbers on a single day. Thirty minutes distributed among that number would mean about 7 minutes to each job. Ninety minutes so distributed would mean about twenty-two minutes to each job. This would be the worst feature of it. In the case where a single job number is worked on an entire day, there would be absolutely no difficulty. To suggest that the men themselves could not arrive at this pro rating with reasonable accuracy for all practical purposes is simply hunting for difficulties. But when we take into consideration that their time was supervised and re-checked by both foreman and head clerk, the difficulty is reduced to a minimum. We do not feel that this "fatality" need disturb us.

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#### OVERTIME.

Upon this subject respondent says: "If at the expiration of eight and one-half hours, he should work for half an hour longer, the result would be that the total hours *worked* would be nine, and yet *respondent is billed for nine hours of straight time and one-half hour 'overtime'.*"

This he does not assign as "fatal to libelant's case," but this time it "is adding insult to injury."

Let us see: *Overtime* is charged for at *double rates*. For instance, if a man is receiving 65¢ an hour for *straight time*, he is entitled to a \$1.30 for *overtime*. In the keeping of these accounts, however, a 65 cent rate is kept constant and the *time, instead of the rate*, is

doubled, so that, if a man works 1 hour overtime, his pay is \$1.30. In the account, however, it appears as 2 hours overtime at the rate of 65¢, again equalling \$1.30. We have illustrated this under the discussion of its effect on “profit.”

Now, apply that to the instance given by respondent.

“If at the expiration of  $8\frac{1}{2}$  hours he should work for half an hour longer, the result would be that the total hours worked would be nine, and yet respondent is billed for nine hours of straight time and *one-half hour* overtime.” In other words, respondent is billed for nine and one-half hours time at 65 cents an hour, which equals \$6.17 $\frac{1}{2}$ . If, however, the *rate* had been doubled, instead of the *time*, the charge would appear thus:

$$\begin{array}{l} 8\frac{1}{2} \text{ hours at } \$ .65 = \$5.52\frac{1}{2} \text{ and} \\ \frac{1}{2} \text{ hour at } 1.30 = .65 \text{ which,} \end{array}$$


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being added together, = \$6.17 $\frac{1}{2}$

It thus appears that respondent has himself again “added insult to injury” by leaving out of his statement *the fact that the one-half hour of overtime is paid for at double rates.*

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#### MISCELLANEOUS IRREGULARITIES.

These will be considered in an appendix to this brief.

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#### PUTZAR'S POSITION, AND HIS RELATION TO THE PARTIES.

In his treatment of this subject, respondent has done some artistic work.



Putzar's time sheets are prima facie evidence of the facts to which they purport to certify. They are also supported by the testimony of Curtis. Libelant, therefore, does not require Putzar's testimony in the case. Knowing this, respondent plans to destroy their effect, and his first move is an attempt to remove from his own case the presumption which, under the law, rests against him for failing to call Putzar in his own behalf. He acknowledges that he could have had him, had he desired, but excuses himself upon the ground that *nearly a year after the transactions now under consideration*, he sent for Putzar, who then told him over the phone that, if called upon, he would give his evidence, and it was not necessary "for me to interview him." To this he adds, as a make-weight, that he asked Putzar if there were any differences between himself and Captain Matson, to which Putzar replied, "he didn't like Captain Matson's treatment of him in failing to give him recommendations to the Portland Steamship Company."

On this slight incident respondent bases his excuse for not calling a witness, who, he contends, is one of the most important in the case. This slight incident he also uses as a foundation for an attack, not only upon Putzar's record as a time-keeper, not only upon Putzar's personal honesty, but upon the honesty and integrity of everyone connected with the case of the libelant. He refuses to call the witness, but asks other of his own witnesses whether or no they saw Putzar on the ship, or checking the men off at given times, to which they replied "I didn't see it", or, "I never saw it". Upon what

his own witnesses say they “didn’t see”, he attempts to build a theory that Putzar did not perform his duties with respect to time keeping. After diligent effort in this line, along with imputations of fraud and wrong doing, he concludes that he has *cast such suspicion upon Putzar* and his record as to make it incumbent upon the *libelant* to call the witness. His theory is, that in view of this proceeding upon his part, the libelant must call Putzar to repel these false charges or stand convicted under the legal presumption that *our* failure to call him is a “failure to make proof when you have it within your power to do so.” Throughout this tirade upon Putzar’s relations to the libelant, respondent indulges, as in other parts of his brief, in every unfavorable inference he can invent by the partial use of testimony and the refusal to recognize any evidence of fair dealing or favorable inferences that will not serve his malignant purpose.

Our review of those attacks, which we shall presently undertake, will show that they are unfounded, many of them so palpably unfounded that respondent must have known it when he made them, and we will then leave it with the Court to say whether the presumption referred to applies to the libelant, whose case is perfect without the help of Putzar, or to the respondent, whose servant he was, and from whom it could have ascertained the truth, if it was truth it desired.

In the beginning, respondent lays down the proposition that Putzar’s employment was limited; that he was to be a timekeeper on the job, but that the real pur-

pose of his employment was to ascertain the saving on the crankshaft if it did not have to come out; though, as matter of fact, he was made timekeeper on the "whole job", and throughout the record there runs a complaint that he did not keep "shop" time as well as "ship" time. Back and forth they go, from one position to another according as the particular contention then under consideration requires.

It is undisputed that Putzar was to succeed Klitgard as the engineer of the vessel. Inasmuch as the vessel when repaired was to be under his care, he was, in that relation, more interested than Klitgard, the outgoing engineer, in seeing that the work was properly performed, for he was to have the responsibility of its proper operation at sea. He was appointed to that position *a week before she went to sea*. (Saunders, Vol. V, page 1777). She went to sea immediately upon the completion of her repairs (Vol. V, page 1777). We thus find him in actual authority as chief engineer at least a week before the repairs were completed.

Again, it is undisputed that Captain Saunders introduced him to Mr. Christy (page 1286) as "their adviser on that job and what Mr. Putzar advised them to do they would do". Respondent "suggests" that Christy is responsible for Putzar assuming that position of "adviser", and encouraged it (brief, page 94). But why Christy responsible? Why not Saunders, Matson's representative, responsible? Did he not initiate the idea by so introducing Putzar? If this were not true Captain Saunders was at their disposal to deny it.



That it was true is shown by the testimony of Klitgard, Saunders, Siverson, Wilhelmson and in fact everyone directly connected with that work. That Klitgard, upon whom now they desire to settle the authority, thus conferred upon Putzar, always consulted with him as the work progressed, and that in such consultations Putzar's opinion at many times had the controlling weight, is also undenied. Siverson so testifies and Klitgard does not deny it. Saunders knew this and, if it was done without authority, why did he permit it?

Why should respondent now, in his brief, be so anxious to limit the authority of this man to the mere capacity of checking the time and reporting the time so checked to the president of the Matson Company? Even if this express authority had not been conferred upon him in the manner we have indicated above, there is known to the law what is called ostensible authority derived from the manner in which an agent is held out to a third party. That Mr. Putzar had the extended authority for which we contend, no one reading this record and having in mind what was done during the progress of this work can for a single moment doubt. So when respondent begins his argument with the assertion that "no other authority was given him except to keep time on the ship's repair work—on the whole job" (page 74) he starts with a false premise.

Now with regard to Putzar's relations with the United. No one connected with the United, except Mr. Gray, is suggested as having known Mr. Putzar before this job was commenced, and it is undisputed that



Mr. Gray knew him only casually (Gray, Vol. VII, page 2348). At the time the timekeeper was selected Mr. Gray suggested three different men, but Captain Matson is not sure but that he himself suggested Mr. Putzar (Matson, Vol. V, page 1663). Notwithstanding that, Captain Matson afterwards testifies that Gray said that there were only three men whom he would allow to act as timekeeper in his yards and Putzar was one of them (Matson, Vol. V, page 1697). Gray not only denies this (Gray, Vol. VII, page 2347) and says it is a matter of indifference to him, but the suggestion is ridiculous upon its face, because the timekeeper represents the customer and Mr. Gray might as well have said that he would not have the customer personally supervise it.

But Captain Matson does not rest upon the suggestion of Mr. Gray respecting the desirability of Putzar for that position. He goes to a close friend, Mr. Samuels, in whose employ Putzar had been for years, and makes inquiry of Mr. Samuels respecting the man. Mr. Samuels says "he is all right" (Matson, Vol. V, page 1697). When asked if he would undertake to say that Putzar was not a man of the highest integrity and skill in his profession, Captain Matson says, "I decline to answer" and attempts to carry out respondent's present imputation that perhaps he was not, notwithstanding that Matson had received assurances from Mr. Samuels in whom he has every confidence, that the man was all right, and notwithstanding there is not a word of testimony

offered in the record against the man's reputation for absolute integrity. It seems that if there were even so much as a suggestion afloat against this man's integrity this diligent and malignant litigant would have ferreted it out and produced it in this record to go along with his other insinuations and unfounded charges against the man's reputation. But no; he must be in collusion with the libelant because a year afterwards this man does not submit to an interview with counsel! What occurred at the time of that request we do not have in detail. We are only told what, in the words of the witness telling it, is the "gist of the conversation" (page 2199). When we have in mind the intense partisanship of that witness as shown by this record, when we have the manner in which the experts report was amended as told at the same time, we may be excused for the suggestion that the incident lost nothing by the mental transference into the "gist of the conversation". It is said that Putzar replied that he did not care to call on him and at the proper time, if called upon, he would give his evidence in this case and "it was not necessary for me to interview him". There may have been many good and honest reasons why Putzar did not care to call upon him. It does not necessarily follow that he had a sinister motive in declining to do so. His employment or his work at that time may have been such as to render his attendance upon counsel very inconvenient.

In this connection it will be observed that the record shows the respondent deemed Putzar *necessary* for

*their case.* The excuse they make for not calling him also shows upon its face that they feared that if they did call him his testimony would not bear out their contention. We do not have to resort to a presumption of law for that conclusion. But why did they fear him? Can it be that his report in their possession did not square with their new contentions in the case?

Then we have the flourish at the close of the case which respondent refers to as "interesting". (brief page 75). After all the testimony had been closed respondent suddenly recalls Mr. Curtis and asks him whether or not Putzar is in the United's employ and finds that he is and had been in such employ for about *six weeks* and that *previous to that time*, up to the time of coming into such employ, *the United had nothing to do with him.* What an incriminating circumstance that is? The taking of testimony was under way from August 15th, 1911, until May 9th, 1912. The work, out of which the present litigation grew, was finished in Sept. 1909. Between the time the work was done and the time that Putzar entered the employ of the United is just short of *two years and eight months.* Two years and eight months after the circumstances arose there is no connection between the United and Putzar, but at the very end of a long drawn out piece of litigation this skilled mechanic, whose services are free to whoever desires to employ him, finds himself with the United! Does respondent regard this as "interesting" because he regards it as evidence of intimacy between the parties that would tend to prove fraud and collusion two



years and eight months before? Or does he regard it as "interesting" because the man being then in our employ is regarded as a man whom the respondent could not be expected to call, notwithstanding that *during the time the respondent's case was put in he was not in our employ?* Or does respondent regard it as "interesting" because at that time we knew where he was to be found and therefore could have called him if we desired? Or does respondent regard it as "interesting" because it discloses that *he also then knew* where the witness could be found and could have called him if he had so desired? The respondent, who seems to have such a keen scent for "hidden humor" may perhaps find some "hidden humor" in the foregoing suggestions.

But let us not lose sight of the purpose for which respondent lends himself to this course. His purpose, as he says, is that, "In view of the very serious attack made on Putzar's time books and sheets as shown by the cross-examination of Curtis, and in view of the relation existing between the libelant and Putzar, a relation which *culminated in entering their employ during the pendency of the hearings in this litigation*, we submit that it was clearly incumbent upon libelant to have called Putzar to the stand to clear up some of the vital defects in his work, as shown by the time sheet record, and that he was not called carried with it an inference which does not help the libelant's case" (brief, page 76).

With this statement of respondent's purpose let us examine the record. It will show that we did not need Putzar for that purpose.



Now what were the relations between these parties, other than those already considered, that are supposed to cast suspicion upon the integrity of their transactions?

Why, it is said that Putzar *copied* the time indicated by the time *cards* into his *time sheets* that are the *final permanent record* of the time. Let us examine into that. That Putzar kept an independent time book is not disputed, though a great fuss and stir is raised because Captain Matson could not find it. Why did he not ask him for it. No one testifies that he asked him for his *time book*. He asked him for his *report* upon the time Vol. V, page 1708) and respondent had a report which Matson says he did not look at and the nature of which the record does not disclose. He says that what he wanted was Putzar's time book—the pocketbook that he carries around with him, but only *asked* him for the *report* (Vol. V, page 1708). But if a *time book* was essential, Putzar's time book *was not the only one at his disposal*. Klitgard was on the job all the time and he carried one; Kinsmann carried one and “everyone connected with the job of that description” carried one (pages 1872-73). But Matson did not want Putzar's hand book. That is an afterthought. He really did not want anything. He was just mad about the transaction.

Now we say it is admitted that Putzar kept an independent record in a handbook. If he kept such a book the presumption is in favor of its integrity. Now, how do they attempt to meet that presumption? Why they bring witnesses who say “they did not see him take the

time". That kind of testimony does not go very far. Kinsmann "who did not see" was otherwise employed. Attempt is made to place Kinsmann in a position where he would be able to identify the work done in the engine room, which was the subject of the specification work; so that he would be able to point out to the experts the work done on the tank top and the work done at the windlass and explain to them the work done on the gudgeons, on the propeller shaft and on the propeller. Indeed Kinsmann must have been omniscient. But the fact appears that Kinsmann was at work with the *ship's crew in the boiler room* repairing the auxiliaries, with which work the United had no concern (Vol. VI, page 1992). His position on the ship was an inferior position that carried no responsibility for this work and with which he had no connection. Klitgard had many duties to perform *but the supervision* of Mr. Putzar *was not one of them*. Saunders was at the yard some times and much of the time he was not at the yards.

But it is said that Putzar was not present "during the 23 nights on which his time sheets give detailed recitals of the names of the men working, the character of the work they were engaged in, and the hours worked by each" (brief page 88), and Kinsmann is supposed on two occasions to have seen him leaving the works at the close of the day.

Let us not forget that there is a great difference between keeping time on the ship, and time in the shop. While in the shop there was work, other than this particular work, going on, upon which the men worked dur-

ing the same days that they did "Hilonian" work, *on the ship* they did *only* "Hilonian" work. Therefore, the method of keeping time on the ship is not so intricate as the method of keeping time in the shop. The only segregation necessary with respect to time on the ship is, that required between contract work and time and material work. When, therefore, a man is set to work upon the ship, there is not the same necessity of keeping track of him throughout the day that there is when he is working in the shop. With reference to the work upon the engines, that being the principal repair, after it was determined that, by virtue of the changes in the specifications, all that work was to be done under a single heading, segregation was no longer necessary, and when the men were put to work in the morning in the engine room, if they remained there at work during the day, so far as time is concerned, they required no further supervision. So far as other matters were concerned, Klitgard was present to supervise.

The *night shift* in the engine room *had a special work to perform*. They were detailed to this special work because it could not be done to advantage in the day time, due to the interference of the workmen on other jobs (Vol. IV, pages 1187, 1188).

These men were checked off when they went to work in the evening, at which time Putzar was present. In the morning they were checked off by the night foreman and the day foreman, in which checking, again Putzar was present to take part.

Now, let us consult the 23 sheets that cover the 23 nights here in question. The sheets are dated on the top, and the Court will find it underneath the spring binder of Curtis' Exhibit No. 3 and also Respondent's Curtis' Exhibit No. 4. In Curtis' Exhibit No. 3 the sheets are also numbered on the bottom, in a circle. They are as follows:

Aug.	24	Sheet	3
	25	"	5
	26	"	7
	27	"	10
	28	"	12
	29	"	14
	30	"	17
	31	"	20
Sept.	1	Sheet	23
	2	"	26
	3	"	29
	4	"	31
	5	"	34
	6	"	37
	7	"	39
	8	"	44
	10	"	49
	11	"	51
	12	"	54
	13	"	58
	14	"	62
	15	"	66½
	16	"	69



It will be noticed that the work on all of these nights is *homogeneous work*; that is, each man noted on the sheet worked the *entire time upon a single job*. So, when the time and job number were taken as the men entered upon the work, no further oversight to segregate their time was necessary.

It will be further noted, that the men worked from 13 to 16 hours, and on holidays, 26 hours, excepting only two instances on the last day, when one man worked 6, and another man 10 hours. The 26 hours on holidays represents 13 hours. These charges included, of course, the bonus time.

Henry Nelson, the night foreman, confirmed this. He says: The particular piece of work to be performed at night was laid out for him by the day foreman, and that his work was confined then to a particular piece of work during the night, and to a particular part of the ship.

“Q. How about the length of time that the men would work in the night time on a single job, whether it was continuous, or whether they were passing from one job to another?

A. My work was for the most continuous. It was under all one continuous job. There are a few instances where they passed from one job to another, but I don't remember just how many. I don't think there were very many” (page 1188).

There was also some nightwork done *after Mr. Putzar was appointed engineer*, during which time it is conceded that he was on board. This was finishing up work, and is probably the time referred to by Mr. Nel-

son when "There were a few instances where they passed from one job to another" (Vol. IV, page 1188).

What now shall we say with respect to respondent's "challenge" to counsel (page 88), and with respect to the inference "so strong that it was incumbent on counsel to overcome it if possible" (pages 88-89).

What, under these conditions, was to interfere with Mr. Putzar's taking accurate note of the men when they went on work in the night, and again checking them off when they left work in the morning, and thus keeping proper track of the work so performed?

And this manner of keeping that time must have been well understood by the respondent when it appointed its timekeeper, for did he expect Mr. Putzar to stand watch over all of these men all of the time that they had worked,—for each of 23 days out of 27, to stand watch over that work for 24 consecutive hours? Of course not. It remained for the ingenuity of counsel to scare up this alleged objection by substituting a suggestion of an utterly impracticable method, for the practical method that any reasonable or sensible man would adopt.

On the two occasions when Mr. Kinsmann says he was talking with Putzar in the yard when the men were coming off, how does he know that Putzar had not already checked up the men previous to their coming off the ship?

According to respondent's own testimony, the keeping of time is done by checking the men off ~~in~~ on the

morning, also seeing they were on the job during and between the morning and noon, checking them in the afternoon and seeing them on the job in the afternoon (brief, pages 91-92). That is a day job, but when the men work continuously during the night, it is not necessary to watch them all the time.

The unfairness of respondent in this matter is exemplified by the following quotation from his brief (page 94):

“By this time, the Court is probably wondering what Putzar did, if he didn’t keep time. The record discloses an answer: David Doig, the foreman of the machine shop, says, ‘All day long I had to contend with Mr. Putzar, and he chased me all day long *around the shop*’ (Vol. III, page 1006).”

The inference is suggested from this, that he was not keeping time. Here is the entire statement of the witness. He is asked with reference to the fairness with which he divided up his personal time between the different jobs:

“A. Just as honestly as I possibly could. If the job was a hard job to contend with, I had to put more time in with it, and my time was more taken up with that job; my time went down on that particular job. All day long I had to contend with Mr. Putzar; and he chased me all day long around the shop”.

To an impartial mind, that is testimony indicating Putzar’s fidelity to his employer, and as the keeping of proper time is an element of such fidelity, the inference would be the reverse of the one respondent attempts to

draw. He was keen upon the heels of the foreman of the machine shop, to see that the Matson Company got what was its due.

We have said that Putzar's time book was his independent record. The cards were the United's independent record. But exception is taken to the fact that the two were put together, and checked one against the other, and the result recorded as the time to be charged. And it is further objected that his record was made in duplicate, one copy handed to each party, for what Putzar retained he retained as the representative of his employer. The allegation that he did not turn this over to his employer until two months afterwards, is injected into this controversy to impute a desire to withhold the information from the Matson Company. They worked upon these repairs until the morning of the sailing of the vessel and Putzar had, in addition, the multiplicity of his duties connected with the preparation of the vessel for sea. We know that immediately upon the completion of the work, he went to sea as chief engineer. He was thus not only absent, but he was fully employed in another vocation. Under these conditions, can respondent find no more charitable inference for that delay than an inference of fraud?

Objection is made that the time sheets from September 17th to September 24th, inclusive, are in Mr. Curtis' handwriting, from which the inference is suggested that Curtis domineered Putzar's record of time.

In the first place it is immaterial who did the clerical work of transferring the time to these sheets. Putzar



might have done it, if he had had time. Curtis might have done it, if he had time, or, had neither had time, a clerk might have been employed to do it. The material fact connected with the matter is this: Putzar had his independent record in his time book; Curtis had his independent record in his time cards. The one must be checked against the other, or there can be no agreement as to time. Each was keeping independent time. The fact that Curtis wrote these up at a single sitting is itself evidence that Putzar was not regarding the time sheets as his daily record, but was depending upon his time book. The fact that they were not entered up in consecutive order, at times, is evidence of the same fact. Putzar, having his own time, made his comparison between that and the time cards at his leisure, and, after checking one against the other, and arriving at an agreement as to their correctness, the result was recorded in these sheets. Though at first, the sheets were daily entered up, during this time, the testimony is clear that Mr. Curtis was prodding Mr. Putzar to check up the cards against his own time, and Putzar said he was too busy (Vol. V, pages 1524, 1525). Finally, when he had checked them as correct, he passed them as corrected to Mr. Curtis to do the clerical work of recording the result on the sheets (Vol. V, page 1525), and after they were so recorded he checked that record back against his own record (Vol. V, page 1525). What is there wrong or suspicious about that? How does that impute collusion, or fraud, or infidelity or inaccuracy, to the time kept by Putzar?

But it is said that the result of Putzar's work belonged to his employer and to no one else.

“In this view of the matter, the time book, the time sheets and all else connected with his work was the sole property of the respondent. Yet we find libelant in possession of purported duplicate carbon copies of the original sheets, and these copies are introduced against respondent as proof of the value of the labor done on the ship” (brief, page 98).

This contention is childish! Is a timekeeper a secret agent, a detective, a spy upon the United? Or is he appointed to see to it that the time which they claim, and upon which their bill will be made out when presented, is the correct time?

It will be noted that not only by the method pursued did the United have the advice of the time kept by the Matson Company, but the Matson Company, in turn, had advice of the time kept by the United, in the cards that we give to their timekeeper for inspection. As well say that Mr. Curtis was untrue to his employer, in submitting that time to such inspection; that he, in turn, should have been a secret agent, to build up the time for the United. The two records must, at some time, be compared. Were they to be held to be fought over at some future date? Were they to be held for the purpose of initiating a dispute as to the correctness of the bill? Or were they to be compared and adjusted when the facts were yet fresh in the minds of both parties, and when differences might be adjusted by consulting the work itself and the workmen thereon employed?

The fact that this record was given to both parties would not prevent them from rechecking it, as was proposed by the United when the dispute first arose.

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#### IRREGULARITIES OF PUTZAR'S TIME SHEETS.

We think we have already disposed of respondent's "(c). *Failure of time sheets to chronologically state the time.*" If that is not sufficient we are satisfied with respondent's suggestion as to the reason on page 110 of his brief, because that suggestion casts no doubt upon the verity of the record. "To err is human" and to correct such errors when discovered is as nearly divine as is given to humanity. It is not evidence of "fraudulent collusion."

"(b). *Improper charges for work done on the circulating pump and smoke stack contracts*" (brief, page 101).

Now, it is admitted in the brief that there was a dispute as to how much of the work done upon the smoke stack was covered by the \$900 contract. While we do not feel that the District Court was justified in striking out the \$180 charged on the smoke stack for extra work, it is not our present purpose to discuss the matter from that point of view. The question is whether or no at the time that Putzar kept his time, he was justified in placing the smoke stack charges, referred to in respondent's brief, on a time and material basis rather than under a contract and whether or no



his having done so is evidence of "fraudulent collusion" (brief, page 108).

The items in question are those charged on *sheet 42 under No. 5360* (brief, page 107). By consulting the sheet, we see that this work is denominated "Smoke Stack." It does not refer to the \$180 item which was disallowed, which is for making "new top for breeching and *making 2 new* turnbuckle hangers (Vol. I, page 39, Schedule 9). Note that this charge is for making *two new* turnbuckle hangers.

Neither is it for the \$60 allowed by Klitgard according to the testimony quoted in the brief (pages 106-107), for that was the "air casing around stack below umbrella enlarged and renewed." See Klitgard's report "of minor contracts" (Vol. VI, page 2702, Subd. 9). It was for *other work* upon the smoke stack, *which was not under contract*, and this is shown by libellant's exhibit Klitgard No. 2, which is Klitgard's own report upon the work (Vol. VII, page 2688). Under the heading in that report of the "work performed *but not under contract*," we find (on page 2699, Subd. 6): "Smoke stack guys, shackles, turnbuckles, pins, blocks and nuts *overhauled and repaired*."

Again, under the same head of "work performed but not under contract," as it relates to the boilers, we have in the same report (Subd. No. 7, page 2698) "1-8" Channel iron stanchion supplied and fitted in lower course flange, *after end of stack*, as directed (for extra support)."



Then again on the next page under the same head (Subd. No. 10): "*Damper in main stack, overhauled and reinstalled, new handle supplied and fitted.*"

This is all "smoke stack" work and answers the description in Putzar's sheet of the charges against the "smoke stack."

So that the full force of this admission may not be lost we again call attention to the exhibit. These items are under the head of "*work performed, but not contracted for.*" At the end of that heading, we have another head, page 2700, "main contract," which contains Mr. Klitgard's contention respecting the manner in which the work under the specifications was done. On the following page, 2702, we have the heading "Minor Contracts," which contains Mr. Klitgard's report of the smoke stack *contract* (Subd. 8).

"Stack renewed.      \$900.00.      *Lower casing omitted.*"

This is an admission that the \$60 charged in Schedule 9 of libel was not intended to be included in the \$900 contract. This is followed by Subd. 9:

"Air casing around stack, below umbrella enlarged and renewed, \$60.00."

The above is conclusive proof that, at the time the work was being done, Klitgard, as well as Putzar, knew that there was "smoke stack work" being done that was *not included under any of the contracts*. Thus Putzar's interpretation of the "smoke stack" contract is corroborated by Klitgard.

If this charge in Putzar's time sheet indicates "fraudulent collusion" then Klitgard was a party to that fraud.

"(a) *Improper charging of the work done on the donkey boiler contract.*"

This charge appears upon the first day's work.

The catching at this is like the catching of a drowning man for straws, and indicates the extremity to which respondent is driven for evidence for "fraudulent collusion." That it was not allowed, but was crossed out of the carbon sheet, is admitted, and if the Court will consult that sheet it will see that it is crossed out in the *peculiar colored pencil* which Putzar used to sign his name upon the back, and with the same pencil that the last item on said page, "air tool, 8 hours," is stricken out. This is sufficient evidence that Putzar and not libelant crossed it out. This is also *prima facie* evidence that he crossed it out *before he signed the sheet upon the back*, namely, at the time he was doing his checking. That the erasure does not also appear upon the respondent's copy may be an oversight. That it is any evidence upon which the Court will be moved to conclude that there is fraud or in anywise to disregard the record we can scarcely conceive.

WORK ON THE WHEEL.—With respect to the wheel, the claim is that the number of hours charged is *impossible*, because the ship went on the dock at 1 o'clock (brief, page 114). This contention is of a piece with the rest. A wheel was furnished which was too large for the ship and required one inch to be

chipped off the end of each of the propeller blades with filing and trimming of the blades. This was not contract work. See Klitgard's Exhibit, Vol. VII, page 2698, subd. 28 at the top.

The respondent, however, nails his foregoing argument to his construction of the language of Williamson and says: "It was done while the wheel was *laying on the barge coming from the other side of the bay*" (page 118). But why not read the testimony right? The witness is asked if anything was done to the wheel before the vessel was put in the dock and he answered, "Yes, sir, while the wheel was laying on the barge coming from the other side of the bay *some fitting was done in the hub.*"

"Q. Why was that done?

A. *Something was the matter with the keyway.*

\* \* \* \* \*

Q. Was any portion of the *wheel cut or chipped off?*

A. *I do not know.*"

This, certainly, is not testimony that it was cut or chipped while "coming from the other side of the bay".

But Klitgard knows. In his Exhibit VII, page 2698, subd. 28, he says, "Chipped one inch off the end of each propeller blade, filing and trimming blades as directed". Does respondent claim that this was done "while the wheel was laying on the barge coming from the other side of the bay"? That was a large piece of work and there is no evidence that it was done anywhere other than at the works.

So, also, with respect to the contention that ten straight hours time on September 10th on the wheel being impossible. That contention is founded upon the assumption that all work on the wheel was done after the vessel was docked, namely, after 1 P. M. It was certainly possible to do this work before the vessel was docked, notwithstanding the ready answer of Mr. Kinsman to the general question

“Q. Could any work have been performed on the wheel of the ‘Hilonian’ prior to the ship going on the dock of the marine railway?

A. No, sir.”

This matter being followed a little further, he is asked about the ten hours straight time.

“Q. What have you got to say about the wheel?

A. That is an impossibility *unless there was a diver working on it.*”

This is conclusive evidence that when Kinsman was testifying about work on the wheel of the “Hilonian” and the impossibility of straight time being performed thereon, he had in mind *not the new wheel* that was to be installed, *but the old wheel* that was then on the vessel. The same remark naturally applies to Mr. Klitgard’s testimony to this point, who, when asked if it would have been possible to have done ten hours straight time on the sea valve or the wheel of the “Hilonian” on September 10th, says:

“A. No, sir, *she did not go on the dock until 1 o’clock in the afternoon*” (brief, pages 114-15).



*The sea valve:*—Upon this subject respondent does not seem to place much reliance. He drops it with a suggestion that Mr. Gray's testimony with respect to an "extension handle" might furnish the inference that it is connected with the sea valve and he then proceeds to pin his faith to the time charged for the wheel on that date. The rest of this matter will be treated under Appendix II post.

*Air tool:*—An allowance for ten hours when but eight and one-half hours were worked (brief, page 126).

Under this head respondent makes a claim that he is charged fifty-five hours for the use of "air tools" when the men only worked 47½ hours, the balance of the 55 hours being the bonus time. In this argument he admits the 55 hours as correct for the men, but questions its correctness as to the tool, because the tool does not receive the bonus time. We make the same answer to this contention as was made to his contention respecting the bonus time allowed to the men. If the Court will consult the Schedule 1 of the libel (record page 31, the third item from the bottom), it will find this charge:

"Air tool and operator    1023    \$1.25    \$1278.75."

In this charge the per hour rate of the *tool* is reduced the same as the per hour rate of the *man*; consequently, to equalize the charge, the air tool time must correspond with the man's time. Had this time not been made to correspond with the man's time the \$1.25 must have been increased correspondingly.

This charge does not appear to be one of the charges by which it is claimed Putzar's time sheets are *discredited*.

Our answer to what follows under this head will be taken up in Appendix II post.

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#### ALLOWANCE OF OVERTIME, BEFORE STRAIGHT TIME HAS BEEN WORKED.

Respondent takes pains to show by the testimony that it is the rule of the shop that a man must work straight time before he is allowed overtime, and then gives a number of instances in which he claims that "the men are shown to have received overtime (on days other than Sundays and holidays) who have not worked *any* straight time." And from these instances he concludes: "If Putzar was keeping an independent record of time, how can it be conceived that allowances of this character were made by him? If he was simply copying, the problem becomes easy of solution" (pages 125-26).

Before entering upon an investigation of the "instances" cited we wish to observe that these instances show not only that respondent has committed error in his statement that they are "instances" of such allowances of overtime, without any straight time, but also show *on the face of the time sheets* that many of the men had worked straight time *on that particular job*; also that the entries of the straight time being under one job number, and the entries of the overtime under another,

had been *separately entered* by Mr. Putzar. This is conclusive proof that he was *not* copying the cards, because *each man's card carried upon its face both his straight and overtime.*

Those instances where the sheet does not show straight time does not prove that the men had not worked straight time, because if a man worked his straight time on another job and overtime on the Hilonian, only the overtime would appear on the sheet. Let us investigate some of the instances.

“Aug. 26    524            3½ hours.”

This sheet shows on its face that 524 worked 10 hours straight on the engine, and lower on the same sheet he is credited with the 3½ hours overtime referred to.

“395, 396” (same sheet, 2 carpenters) “½ day each.”

These two charges are not overtime charges at all. They will be found on the time sheet only in the total column.

“Aug. 30    100            1 hour.”

Sheet 16 on the same date shows this man worked 5 hours straight on the “Hilonian”.

Worked on other jobs for the rest of his straight time.

“Sept. 13    537            3 hours.”

Shows 3 hours overtime.

The same sheet below shows 10 hours straight time on another number, 5398, and overtime on 5325.

“564            15 hours.”

Shows on the same sheet 10 hours straight time on high pressure valve 5398. The 15 hours overtime was on the propeller.

“Sept. 14 124” (2 sheets) sheet 59, “14 hours overtime.”

On bottom of sheet 60, 10 hours straight time on gear case.

“506 13 hours.”

10 hours straight,

2 hours overtime,

13 hours overtime.

He worked on the first one on the shaft, and the second on the rudder.

“513 (sheet 60) 2 hours.”

He worked 10 hours straight on valves (sheet 59)

2 hours overtime on the engine.

“356 2 hours. (sheet 59.)

10 hours straight on the engine and

2 hours overtime on valves.

“Sept. 15 330 15 hours.” (page 59.)

10 hours straight on wheel,

15 hours overtime on rudder (center of page).

“333 4 hours.”

10 hours straight and

2 hours overtime on links (sheet 65),

4 hours overtime on eccentrics (sheet 64).



"Sept. 16    535            2 hours."  
              10 hours straight time on bilge sections  
                              (sheet 68),  
              2 hours overtime on coupling bolts  
                              (sheets 67-8).  
 "355            2 hours."  
              5 hours straight on rudder  
              2 hours overtime on shaft (same page,  
                              sheet 67).  
 "500            5 hours."  
              10 hours straight (bottom of page 67),  
              5 hours overtime on shaft (middle of  
                              page 67).  
 "512 (sheet 68) 2 hours."  
 Bottom of sheet 67,  
              5 hours straight on rudder,  
              2 hours overtime on machinery.  
 "519            2 hours."                    (page 68.)  
 Sheet 67 (bottom),  
              10 hours rudder straight  
              2 hours overtime.  
 "538            2 hours."  
              5 hours straight time on shaft (sheet  
                              67),  
              2 hours overtime on machinery (sheet  
                              68).  
 "Sept. 22    325            10 hours night."            (sheet 85.)  
              "568            8 hours night."

From this it appears that if we were to apply  
 to appellant's "instances" the same reasoning

that appellant applies to the time cards and time sheets, namely, that they disclose so many errors as to discredit them, we would be justified in saying that the foregoing showing so discredits his entire brief upon the subject, as to make it absolutely worthless.

As matter of fact when we have finished, we think it will appear that we have shown so many unfounded criticisms and wrong statements in the brief respecting this keeping of time that the Court will find that no confidence can be reposed in his statement of alleged mistakes.

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**THE CLAIM THAT MATERIAL CARDS DISCLOSE MATERIAL  
USED ON CONTRACT JOBS AS CHARGED TO QUANTUM  
MERUIT (Brief, pages 66-67).**

The instances given here are charges for gratings, ladders and platforms. They are claimed to be contract work, because Schedule 5 of the libel has a charge for repair to ladders, floor plates and gratings in engine room as per agreement.

This is the same objection as is made on page 127 of the brief to a charge in Schedule 1 for 1145 lbs. of checkered floor plate, and is fully answered on the first page of that part of Appendix II which is headed "Reply to Appellant's Brief (brief, 127 to 132)." The rest of the matter under this head will be found treated in said Appendix.

With respect to the conclusion attempted to be drawn that the "whole method and plan was wrong and it is

hopeless to bring order out of the chaos of such proof" we have only to observe that the entire endeavor of appellant is to create a "chaos" by charging as errors what are not in fact errors, and by withholding, as already suggested, many of its claims of error so that the same might not appear in the record as fully explained, when, otherwise, proper explanation could have been obtained at the hearing.

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We think we have answered the various objections raised to the accuracy of the cards and time sheets sufficiently to show that, as a rule, the criticisms are erroneous and far fetched, and made for psychological, rather than any practical, purposes; that they are as accurate as ordinary human agencies can make them. Moreover, we have no apprehension that anyone, having in mind the facts and circumstances as a whole, will for a moment lend ear to the claims made of fraud or collusion on the part of the United or Putzar.

We have one word to say in conclusion concerning these cards and time sheets as evidence:

Appellant assumes that their admissibility is limited to the office of "Memory Assistant", and that therefore Adamson, or any other witness for that matter, could make use of them only in so far as they enabled him to speak of his own personal knowledge of the matters which they recorded (brief, page 21).

He therefore criticises the fact that other cards were introduced where the workmen were dead or had gone

out of the jurisdiction, the verity of which was attested by witnesses to the fact that the workmen were there at the time, and that the handwriting on the card was the handwriting of such workmen. While in every instance, where we could, we offered the testimony, either of the man who made the entry or of some one who could testify to the facts from his own knowledge, nevertheless, we claim that a broader rule of evidence applies to them. It is undisputed that these cards are the accounting system of the United, and that from them the record of time and material is transferred directly to the schedules as they appear attached to the libel, and which are also presented to the customer in the form of a bill (Curtis, V. IV, pages 1428-1429).

In the case of the time sheets, they were, as we have so often had occasion to suggest, checked against Putzar's time book and then *recorded in a permanent form in the time sheets*. By this means, the cards themselves and the time sheets, are admissible not only because we have proved in the one case their verity by a party who knew the facts, and in the other case by proving the signature of Putzar to the sheets, supplemented by the testimony of Mr. Curtis as to the correctness of the sheets, but also upon the principle that they are in effect the account books of the libelant,—*regular entries in the due course of business*.

We took that position at the time the testimony was offered (II 412) and it is supported by a very recent decision of the Circuit Court of Appeals for the Seventh



Circuit, upon which point the opinion cites nearly a half a page of authorities. It is as follows:

WISCONSIN STEEL CO., v. MARYLAND STEEL CO., 203  
Fed. 406, 407.

“Plaintiff had a large shop, employing over 4,500 workmen at the time in question. In order to know how much was paid in wages in the execution of every job, whether for itself or others, plaintiff employed a cost system at the bottom of which were workmen’s time cards. On registering in, a clerk saw to it that each workman got his own card; on registering out that each deposited his card in a locked box. If a workman failed to deposit his card, his time, which should have been accounted for on the card, would not appear in the payroll. These cards were before the workmen at their respective places, and it was their duty, and their practice in pursuance of that duty, to note in writing on their cards the amount of time given to each separate piece of work. From these cards, book-keepers prepared the payrolls, and also sheets which distributed to each job each workman’s time upon that job, not in terms of time as reported on the card, but in terms of dollars and cents on the basis of wages paid. Then upon plaintiff’s account books these items were charged against each job and against the parties who were having the job work done.

‘Regular entries in due course of business are admitted as exceptions to the hearsay rule. Wigmore on Ev. c. 51. To bring entries within the exception, there must appear, according to the general law of evidence, a practical necessity for their introduction and a circumstantial guaranty that the transactions actually took place as recorded. The practical necessity is apparent in large mercantile and manufacturing businesses, where a transaction that has been participated in by numerous employees in the course of their employment is duly

recorded as an original entry in permanent form by one who is charged with that duty in pursuance of an established system. Wigmore, S 1730. *Feuchtwanger v. Manitowoc Malting Co.*, 187 Fed. 713, 109 C. C. A. 461;'

Plaintiff's books, in which original entries (based on the cards) in permanent form were made in pursuance of a duty, were properly admitted in accordance with the foregoing rule. The 4,500 workmen could not keep plaintiff's books of account. The limit of practicability was for them, under an orderly system, to furnish the data in the aggregate from which bookkeepers regularly employed for that purpose could make up the separate accounts.

Workmen's time cards and other parts of the system (apart from the books) were properly admitted, in our judgment, if for no other reason, because they tended to furnish the 'circumstantial guaranty' of the correctness of the book entries."

In *MISSISSIPPI RIVER LOGGING Co. v. ROBSON*, 69 Fed. 781 (C. C. A.), the question is again treated in an opinion that considers not alone the admissibility of such evidence as the time cards and Putzar's sheets, but also holds that, under the circumstances, they are better evidence than the memory of the workmen themselves. We consider it as setting at rest all of the controversies initiated by appellant upon this subject.

There only remains for us to consider:

#### **THE APPELLANT'S "PROOF OF VALUE OF ALL REPAIRS"**

This is based upon the testimony of the alleged experts, and after what has gone before, it does not require a very extended discussion.

Appellant has constantly suggested that in lieu of the proof that we have made, we should have hired experts to examine the work and to testify what, in their opinion, was its reasonable value. In other words, he wished us to enter upon a guessing contest.

We have in fact done better than that, for in addition to the testimony already referred to we have Mr. Curtis' and Mr. Gray's testimony that in their opinion the amount charged in the bill was a reasonable charge for the work performed (pages 1472, IV; 2466, VII).

Mr. Curtis had, in this respect, the advantage over all of appellant's witnesses, for, while Klitgard saw the work as it was performed, he was, after all, only a practical engineer, and his business did not give him the benefit of much experience upon the commercial side of the question. His ability was a mechanical ability, though he has testified to having "kept time on other jobs", and in a few minor cases figured on cost.

Neither Mr. Gardner nor Mr. Heynemann had any knowledge of what the work was that was performed. All of their knowledge upon this subject was derived from what they could see of the *completed* work, and what they *could not* see *was explained* to them by Mr. Kinsman.

Now what they could see was only the finished work. They had no knowledge of the conditions and difficulties under which it was performed. What was explained to them by Kinsman is hearsay purely; nor do we know what Kinsman said to them in such "explanation".



That is important, because, were we to waive its hearsay feature, his explanation may have been entirely wrong and misleading, for Kinsman himself had no accurate knowledge of the job, regardless of what appellant claims. He was an assistant engineer, not engaged upon this work at all, but, as we have already said, occupied in the boiler room repairing the auxiliaries. His explanations, however, were only his unsworn oral statements.

On the other hand, Mr. Curtis' duties have for years been the following up of work of this nature, checking the time and material and preparing the bills therefor, and Mr. Gray's experience is both mechanical and commercial. By this means each obtains an experience that would give him an accurate knowledge of the cost, and to that extent his opinion is more valuable than that of any witness called for the appellant.

But this is not our only objection to the testimony of appellant's experts:

Their figures and their testimony show that their conclusions were not based upon true data. As already suggested, the specifications on which they based their figures were materially different from the specifications upon which the bid was made, in that it included what was called an "assembling clause", upon which we have already commented.

In the next place they proceeded upon the theory that the changes and modifications in the specifications were substitutes, and, instead of figuring their value, they



adopted the specifications as though they were unchanged, and applied to the changed work the specification price. As we have already indicated, that was a price fixed for work "in strict accordance with the specifications".

In the next place, they were unable to reproduce any of their calculations resulting in the different amounts appearing in the tabulation of their report, "Exhibit 1, Heynemann, No. 4", pages 2667 and 2670. This was very important. For instance, take the first item: "1—\$800." This refers to item No. 1 of "Respondent's Exhibit Kinsman No. 2" (page 2643), "Renewed No. 4 tank top on port side and secured fore and aft and thwart ship angle irons under same."

The experts could not give a single element of the calculation on which they base the gross allowance of \$800 and so with each of the other items that were taken up. When pressed for this they "fenced", they skirmished and finally absolutely refused to reproduce the calculation.

This was made the subject of an appeal to the Court to compel them to answer (Vol. VI, page 2126), and the Court, having ordered them to answer, we were still unable to procure the detail. That they never had any detail is morally certain, and that is the reason they could neither produce the original nor refigure it, at our request. What they did was to make a guess, or, as Mr. Hough denominates it, "an educated guess", if you please, and, after they had both made their guess, they

came together and compromised their differences so as to agree upon a given sum (page 265).

In this regard we refer especially to the testimony of Mr. Heynemann, the first of those experts to be examined, and ask of the Court a careful reading of that record.

Appellant in his brief challenges us to criticise Mr. Gardner, but his testimony requires no criticism further than the reading of his examination.

But if appellant thinks that, because Mr. Gray said that he is a skillful man, that he is thereby endorsed as one able to make an accurate estimate of such work, he is mistaken. We accept appellant's challenge to speak outside of the record to the extent of saying that since Mr. Gardner's testimony was given in this case we are informed that he has admitted that we "got him" on his cross-examination. More than this, we are also informed that his attempt to testify as he did in this case has made him the subject of ridicule by others engaged in the same line of business.

However, what shall we say of the experts, whether they be Heynemann or Gardner, who would lend themselves to the rewriting of a report upon their work such as that to which we have called attention in the earlier part of this brief.

Again, we have the testimony of three witnesses, any one of whom is at least as expert as Mr. Gardner and Mr. Heynemann, and one of whom has an international reputation, namely, Mr. Dickie, and every one of these

witnesses agree that an estimate made in the manner in which these alleged experts made their estimates is absolutely of no value.

When asked as to the rule of conduct of men who are careful of their reputations as estimators with respect to estimating upon repair work, Mr. Dickie, after saying he would not like to answer that question in the way we suggested, says:

“Well, I would not like to answer that question in that way, because, what may be a rule of conduct for one would not be a rule of conduct perhaps for another. Some men would undertake an estimate that another would hesitate to undertake. Fools rush in, where angels fear to tread (page 2567).

Q. Fools rush in, where angels fear to tread, and angels fear to tread in estimates on repair work. Is that what we are to understand?

A. No. That might be inferred, but it refers to all estimators, and it refers to repair work particularly, because repair work is not as a rule estimating but to a large extent a guess” (pages 2567-68).

This same witness explains, in detail, why repair work is not “a fit subject for estimating on, either before or after the work was done; probably it would be more difficult to make an estimate after the work was done, because the condition before the work was undertaken would not then be apparent, and the amount of preparation and the amount of work connected with the dismembering of the parts that had to be renewed would be unknown, and there would be no evidence to show what it consisted of, or what the difficulties were that had to be encountered” (Vol. VII, page 2563).

Again, he says: "I have known jobs to cost twice what they have been estimated to cost, without any apparent reason why, and I have known jobs to cost less. The uncertainty of estimating is such that no one can really be sure about an estimate of repairs. I think that is the experience of all those who are engaged in the business" (pages 2564-65).

With respect to the "pointing out and describing" which Mr. Kinsman is supposed to have done for these experts, the same witness says:

"Well, that, of course, would make a difference, if the work was pointed out and described. Of course, no one can say anything about that at all, *because it would depend upon the description and how the pointing out was done*" (Vol. VII, pages 2570-71).

As already suggested, we know nothing about the description, and how the pointing out was done, by Kinsman.

To a long question by the appellant, in which he sets forth the conditions and manner in which he claims Mr. Gardner and Mr. Heynemann did their work (pages 2573-74), he concludes with the following:

"I will ask you if, under those circumstances, it is still your opinion that that estimate arrived at by those two engineers under those circumstances, would be less accurate than would be your estimate, or that of any other competent engineer bidding on the work before it was done",

to which the witness replies:

"Yes. I think it would be so. I most certainly would not have adopted that method of trying to



correct a dispute of this character. It seems to me that these engineers should have also consulted with the people who did the work, and gone carefully over their time and material *and checked up any errors*, if they found them, which would appear to me to be the reasonable way to check up work after it is done."

We suggest that the entire testimony of this witness be read, as he is a man of more than ordinary intelligence and experience, and his testimony is to the point.

Mr. Hopps, when asked about an estimate of the cost of work after it has been performed, by an inspection and by having part of it that he could not see, described to him, says:

"I should not put much confidence in an estimate made under those conditions."

When asked why, he says:

"The cost of repair work generally is very largely labor. Under any circumstances it is a very difficult matter to estimate the amount of labor that will go in any piece of work. It is impossible to know how much work any workman will do in a given time. The conditions under which the work is done affect the amount that goes into it. *Unless you know exactly the conditions under which the work is done*, and have experience—have exact information not experience—as to the cost of similar work done under exactly the same conditions, it is not possible to estimate the amount of time it will take with any degree of accuracy."

Among his conditions, under which the work is done, he names one which we consider very important in this case, namely:

“Work carried on in places where it is necessary to work in a very confined space, is necessarily very much more expensive than in places where ample room is available. If a man has to work in an awkward position, the work is very much more fatiguing than if he can work in a natural position, and the amount of time required, consequently greater” (Vol. VII, pages 2547-49).

It is not necessary to quote further.

Circumstances attending the calling of Mr. Hough makes his testimony upon the subject of peculiar value. This is the man to whom the respondent went for an estimate, and he refused to give it, and who “suggested to Mr. Diericx that I considered it impossible to determine accurate valuations upon repair work which I had never seen”, and received “a retainer” not to give any information upon the subject to the United. He testifies to the same effect as the above gentleman (Vol. IV, page 1370).

Returning to Mr. Klitgard’s estimate, we have already suggested one reason why he would not be very capable in that direction. He had also the personal disability of being erratic. “He will tell you one thing to-day and something else to-morrow” (page 2460).

Moreover, his estimate, which amounted to \$23,156, did not figure into that amount any overtime. Gardner and Heynemann allowed \$2,000 for overtime on work *outside of specification work*, and their \$2,000 was a random guess, though they claimed they tried to make it large.

As the specification work was the most trying, and the principal part of it having been done in the hold of the vessel, it would result in more overtime than the work on the tank tops, windlass, etc. *Mr. Dwyer did not seem to be satisfied that Gardner's allowance for overtime was sufficient (I-105)*

Under these circumstances, if we might be permitted to add to their guess of \$2,000 another guess for overtime upon this other work, we do not think that we would be overstating the matter, by fixing it at \$10,000. That was Gray's "educated guess" (page     ). This being added to Mr. Klitgard's estimate would be \$33,156. Add to this the fact that the prices used by respondent's experts were the prices appearing upon the face of the bill or schedule which prices are *admittedly not the prevailing prices for actual time*, as we have repeatedly hereinbefore shown, it would seem that our bill for \$34,000 is not out of the way even upon the basis of Klitgard's estimates with due allowance made for errors in his "guess".

Upon the whole, we think that the work of respondent's experts cannot be considered as of sufficient value to form the basis of compensation to the United in this case.

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#### COSTS.

This subject does not require very extended consideration.

It is admitted that the allowance of the costs lies in the discretion of the Court. That being so, and the lower Court having allowed the costs, this Court will not interfere unless, of course, there be a plain abuse of

that discretion. This, it seems, ought to end the discussion.

But it is said that the United was guilty of such misconduct in the trial of its case as to make the act of the District Court in allowing costs an abuse of discretion.

These charges are as follows:

The record is large. A large number of witnesses were called. A large number of exhibits were introduced.

Let us consider this charge. It is said libelant's case, direct and rebuttal, covers 1808 pages of the printed record, and took thirty-five days to present. Of that 1808 pages appellant makes no note of the number of pages of the *cross-examination*, but charges it all to the libelant. Nevertheless the cross-examination was not only exceedingly voluminous, but it was also very often a mere fishing expedition, and full of immaterial and improper inquiries, which the libelant could not prevent when the record was being made before a commissioner.

The number of witnesses that have been called, and in fact the entire method pursued in proving the case, was forced upon the libelant by the "tactics" of the respondent, as already indicated in this brief, and yet he wishes to punish us for doing that which he himself compelled us to do.

Neither is anything said concerning the number of pages of the record that is filled with the "encounters"



of counsel, and which *at the demand of the appellant*, were all put into the record (page        ).

The fact that the cards were introduced in evidence “without any segregation of the material portions which could have been read into the record”, has in no wise increased the record, because nothing but the date, and the name of the man, was read into the record.

Most notable of all is his suggestion that Adamson’s testimony as to 15 of the workmen is duplicated by calling the workmen themselves, when this was only rendered necessary because of doubt cast upon Adamson’s testimony with respect to the work of those fifteen men by the cross-examiner.

Then, it is said, that we cause delays in bringing the case to a close. Nothing, however, is said about the delays that were caused by the appellant, particularly the long adjournment that was rendered necessary to enable him to proceed with the trial in another case, and also to await the return of his witness, who was absent. In his brief he says:

“Respondent finished the direct examination of his last witness on November 18th, and no further proceedings were had until May 1st when the libelant cross-examined this witness and started its rebuttal”.

While the pages of the record, which show this long continuance, are cited in the brief, nothing is said in the brief as to its cause. Respondent had closed its direct examination of one of its experts and desired us to cross-examine him that afternoon without preparation

for that purpose. Of course we could have gone on and filled the record with random inquiries at that time, which we did not desire to do. It was *Saturday afternoon, November 18th* (page 2252). We proposed to take the matter up the following Monday, but counsel for respondent said he could not go on then, that he had an engagement at Redwood City in the Moore divorce case. Libelant then suggested Tuesday, which was declined, and Wednesday which was declined. The discussion closed with the request on the part of the libelant that the respondent let us know at least a day ahead when he would be ready to take the matter up again (page 2285). In the interim between that time and May 1st, his time was taken up with the trial of the case referred to and after it ended, his witness was abroad and could not be had for examination. It was up to him to produce him. Inferentially, as far as the brief discloses, we were chargeable with that delay, which was not ours, but his.

So far as his objections to the manner of our proof is concerned, we think that is settled by the cases to which we have already referred.

We hardly think that this Court will conclude that the District Court abused its discretion, under the circumstances.

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#### WITNESS FEES AND MILEAGE OF WITNESSES.

Appellant says that the practice in the District Courts of California has been against the taxation of such

costs. The District Courts of California are not the only District Courts in this Circuit and Judge De Haven's ruling in the present case would indicate a conviction upon his part that the rule which is said to have prevailed in the California Courts should be changed, for in this instance he has taken the opposite view. Judge Hawley, sitting in Nevada Circuit Court, has given the matter a very careful consideration, in the case of *HANCHETT v. HUMPHREY*, 93 Fed. 895 to 898, in which he says:

“Upon a careful review of all the decisions in the national courts, it is manifest that the great weight of authority and of reason is opposed to the conclusion heretofore followed in this Circuit.”

He then reviews all the cases upon the subject and concludes:

“Is it not, therefore, better to follow a well recognized and sound principle of law than to blindly adhere to a precedent simply because it was made in your own Circuit?”

We are content to submit that question upon that opinion.

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#### INTEREST.

The District Court did not allow libellant interest on its *quantum meruit* claim for the period of time preceding the rendering of a judgment and we think in this respect the judgment of the lower Court should be amended. We recognize that the allowance of interest like with the allowance of costs rests in the discretion

of the Court, but in this instance, the disallowance of interest was not an act of discretion, but it was disallowed because the lower Court conceived it to be the law of the State that upon a *quantum meruit* claim interest cannot be recovered *as a matter of law*. He *did* allow interest on the contract counts. He thus exercised his *discretion* in favor of allowing interest.

Our criticism of this part of the decision of the District Court lies in the application of the rule to the facts of this case. It is expressly said, in the case from which the District Court quotes at length that:

“The *reason* for such denial of interest is said to be that the person liable does not know what sum he owes, and therefore can be in no default for not paying. The damages in such case are an uncertain quantity depending upon no fixed standard, and are referred to the wise discretion of a jury and can never be made certain except by accord or verdict” (page 2599).

Now that *reason* does not apply to the present case to the full amount of the *quantum meruit* claim, for by its answer *the appellant admits that there is due on the quantum meruit claim the sum of at least \$19,568.32* (page 48). To that amount therefore the reason of the rule does not apply, and interest should have been allowed thereon for the same time that it was allowed on the other count, viz.: November 28th, 1909, to the date of the judgment, November 26th, 1912.

This brief might have been made more compact, but we had misjudged the time it would take for the examination of the enormous amount of detail that appel-



lant's objections rendered necessary, and so find ourselves pressed for time. We hope, however, that our work will be an aid to the Court in arriving at a just conclusion.

Respectfully submitted,

NATHAN H. FRANK,

IRVING H. FRANK,

*Proctors for Appellee.*



## APPENDIX I.

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### Details of Time and Material Cards, SHOWING SEGREGATION OF LABOR AND HOURS WORKED AND MATERIAL USED, TOGETHER WITH RESUME OF PUTZAR'S TIME SHEETS.

In order that the court may understand the exhibits we offer the following explanation: Each man in the ship has an identifying number; this is called his ship number and appears at the top of the left-hand corner of the time cards.

There are also numbers upon each card indicating the man's occupation. By this number the classification of labor is determined, to-wit: Whether the man be a machinist, a helper, a riveter, a machine operator, a blacksmith, a pattern-maker, a boiler-maker, etc., as shown on the schedule which we have prepared segregating the labor and the number of hours worked.

On the left-hand column under the heading "job number" are a series of numbers which indicate the particular job upon which the men worked during the number of hours on the same line in the succeeding column. By job is *not* meant the entire work on a particular vessel. The same work may be, as in fact in this case it was, divided up into a large number of jobs, each carrying its own number. These numbers follow that particular job throughout whether it be handled in the ship or in the shop.

The column "piece number" is only used where the men are working on piece work and has no application to the work done in the repair of the "Hilonia".

The clock cards simply register the entrance of the men in the works in the morning and their exit out of the works at night.

## JOB NUMBERS

Sheet No. 1

5295	5318	5394	5398
5296	5346	5325	
5297	5360		

[illegible]



[illegible]

[illegible]

[illegible]

Sheet No. 5

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Brought forward				681 $\frac{1}{4}$	315 $\frac{1}{2}$	127 $\frac{1}{4}$									
Adamson	20	G. Martiole	8/26	344			4 $\frac{1}{2}$								
"	20	"	8/27	"			2 $\frac{1}{4}$								
"	20	"	8/28	"			4 $\frac{1}{2}$								
"	21	"	9/12	"			25	Sunday							
"	21	"	9/16	"			3								
"	21	"	"	"			5 $\frac{1}{4}$								
"	21	"	9/13	"			2								
"	21	"	9/5	"			5 $\frac{1}{4}$								
"	21	"	9/18	"			6								
"	21	"	9/19	"			8	Sunday							
"	21	"	9/19	"			6	"							
"	21	"	9/19	"			5	"							
"	21	"	9/20	"			1 $\frac{1}{2}$								
"	21	"	9/21	"			2								
"	21	"	9/22	"			6								
"	22	"	9/14	"			7 $\frac{3}{4}$								
"	22	"	9/10	"			12 $\frac{1}{4}$								
"	22	"	9/9	"			20	Holiday							
"	22	"	9/8	"			9 $\frac{3}{4}$								
"	22	"	9/6	"			25	Holiday							
"	22	"	9/5	"			25	"							
"	22	"	9/4	"			14 $\frac{1}{4}$								
"	22	"	9/3	"			9 $\frac{3}{4}$								
"	22	"	9/2	"			15 $\frac{3}{4}$								
"	22	"	8/31	"			26 $\frac{1}{2}$								
"	22	"	8/30	"			6								
"	22	"	9/11	"			14 $\frac{1}{4}$								
Carried forward					681 $\frac{1}{4}$	315 $\frac{1}{2}$	127 $\frac{1}{4}$	272 $\frac{1}{4}$							



No. 6

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ught forward				681 $\frac{1}{4}$	315 $\frac{1}{2}$	127 $\frac{1}{4}$	272 $\frac{1}{4}$									
mson 22	Wm. Hay	9/20	343				1									
" 23	"	9/16	"												2	
" 23	"	9/14	"				1									
" 23	"	9/13	"												2	
" 23	"	9/21	"				2									
" 24	"	8/30	"				4									
" 24	"	8/30	"				$\frac{3}{4}$									
" 24	"	8/29	"				18	Sunday								
" 24	"	8/31	"				2									
" 24	"	"	"				4 $\frac{3}{4}$									
" 24	"	"	"				3									
" 24	"	"	"				2 $\frac{1}{4}$									
" 24	"	9/1	"				5									
" 24	"	9/1	"				3 $\frac{3}{4}$									
" 24	"	9/2	"				3 $\frac{1}{2}$									
" 24	"	9/2	"				2 $\frac{1}{2}$									
" 24	"	9/2	"				2 $\frac{1}{4}$									
" 24	"	9/2	"				....									
" 24	"	9/3	"												4	
" 24	"	9/3	"												2	
" 24	"	9/3	"												1)	
" 24	"	9/3	"												2)	
" 24	"	9/3	"				1 $\frac{1}{2}$									
" 24	"	9/4	"												3	
" 24	"	9/4	"												2 $\frac{1}{2}$	
" 24	"	9/4	"				1 $\frac{1}{2}$									
" 24	"	9/4	"												$\frac{3}{4}$	
" 24	"	9/5	"					Sunday							3 $\frac{1}{2}$	
" 24	"	9/5	"					Holiday							3 $\frac{1}{2}$	
" 24	"	9/6	"				12								10	
ried forward				681 $\frac{1}{4}$	315 $\frac{1}{2}$	127 $\frac{1}{4}$	343									36 $\frac{1}{4}$

[illegible]

et No. 8

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				681 $\frac{1}{4}$	315 $\frac{1}{2}$	127 $\frac{1}{4}$	401 $\frac{1}{2}$									63 $\frac{1}{2}$
amson 26	J. McDonald	9/3	342				3									
" 26	"	9/3	"				2									
" 26	"	9/3	"				2									
" 26	"	9/3	"				1									
" 26	"	9/4	"				9									
" 26	"	9/7	"				3									
" 26	"	9/8	"				3									
" 26	"	9/9	"				4	Holiday								
" 26	"	9/9	"				6	"								
" 26	"	9/9	"				2	"								
" 26	"	9/11	"				2									
" 27	"	9/12	"				2)	Sunday								
" 27	"	9/12	"				2)									
" 27	"	9/12	"				2)	"								
" 27	"	9/12	"				4	"								
" 27	"	9/12	"				4	"								
" 27	"	9/13	"				2									
" 27	"	9/18	"				4									
" 27	"	9/20	"				2									
" 27	"	9/20	"				1									
" 28	J. Kaszner	8/31	341			3										
" 28	"	8/31	"		$\frac{1}{4}$ )											
" 28	"	8/31	"		6 $\frac{1}{2}$ )											
" 28	"	8/31	"		2											
" 28	"	8/31	"			6 $\frac{1}{2}$										
" 28	"	9/2	"			5 $\frac{3}{4}$										
" 28	"	9/5	"			23		Sunday								
" 28	"	9/6	"			24		Holiday								
" 28	"	9/7	"			6										
" 28	"	9/9	"			23		Holiday								
" 28	"	9/11	"			12 $\frac{3}{4}$										
Brought forward				681 $\frac{1}{4}$	324 $\frac{1}{4}$	231 $\frac{1}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$

Sheet No. 9

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												Draftsman
				Machinis	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	
Brought forward				681 $\frac{1}{4}$	324 $\frac{1}{4}$	231 $\frac{1}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$
Adamson 29	J. Kaszner	9/12	341		23			Sunday								
" 29	"	9/13	"	8 $\frac{1}{2}$												
" 29	"	9/14	"	7 $\frac{1}{2}$												
" 29	"	9/15	"			7 $\frac{1}{2}$										
" 29	"	9/17	"			7										
" 29	"	9/19	"		23			Sunday								
" 29	"	9/21	"	4	1											
" 29	"	9/21	"		1											
" 30	Wm. Megow	9/10	340	9												
" 30	"	9/8	"	5												
" 30	"	9/4	"	9												
" 30	"	9/3	"	9 $\frac{3}{4}$												
" 30	"	9/11	"	1												
" 31	"	9/18	"	5												
" 31	"	9/16	"	9 $\frac{3}{4}$												
" 32	C.E. Wilson	9/12	339			18		Sunday								
" 33	"	9/6	"		9			Holiday								
" 33	"	9/1	"		1	2 $\frac{1}{2}$										
" 33	"	9/9	"			18		Holiday								
" 34	J. Wojdacki	9/8	329	4												
" 34	"	9/7	"	5												
" 34	"	9/6	"	20 $\frac{1}{2}$				Holiday								
" 34	"	9/5	"	18				Sunday								
" 34	"	9/3	"	7												
" 34	"	9/2	"	7												
" 34	"	9/2	"	1												
" 34	"	9/2	"	4												
" 34	"	9/1	"	13 $\frac{3}{4}$												
" 34	"	8/31	"	17 $\frac{1}{4}$												
Carried Forward				847 $\frac{1}{4}$	382 $\frac{1}{4}$	284 $\frac{1}{4}$	463 $\frac{1}{2}$									69 $\frac{1}{2}$



Sheet No. 10

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crano and operator	Draftsman
Brought forward				847 $\frac{1}{4}$	382 $\frac{1}{4}$	284 $\frac{1}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$
Amson 34	J. Wojdacki	8/30	329	7												
" 35	T.M.Fleming	9/11	331	4												
" 35	"	9/11	"	4												
" 35	"	9/10	"	9												
" 35	"	9/8	"	7												
" 36	"	9/16	"	9 $\frac{3}{4}$												
" 36	"	9/17	"	3												
" 36	"	9/15	"		9											
" 36	"	9/13	"	4												
" 36	"	9/13	"	3												
" 36	"	9/13	"	9												
" 37	RudolphShafer	9/10	332	1 $\frac{1}{2}$												
" 37	"	9/6	"	20												
" 37	"	9/5	"	18												
" 37	"	8/30	"	.....												
" 37	"	9/1	"	6												
" 38	C.A.Peaslee	9/8	334	9												
" 38	"	9/10	"	4 $\frac{1}{2}$												
" 38	"	9/7	"	9												
" 39	JoeLarraondo	9/12	335		18											
" 39	"	9/13	"		4 $\frac{1}{2}$											
" 39	"	9/17	"		1											
" 39	"	9/15	"		2 $\frac{1}{2}$											
" 39	"	9/16	"		2											
" 39	"	9/16	"		3 $\frac{1}{2}$											
" 39	"	9/16	"		1											
" 39	"	9/17	"		1 $\frac{1}{2}$											
" 39	"	9/17	"		1 $\frac{1}{2}$											
" 39	"	9/20	"		1											
Carried forward				975	427 $\frac{3}{4}$	284 $\frac{1}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$

Sheet No. 11

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				975	427 $\frac{3}{4}$	284 $\frac{1}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$
Adamson 39	J. Larraondo		335		1											
" 39	"	9/20	"		1											
" 39	"	9/21	"		1											
" 39	"	9/21	"		$\frac{1}{2}$											
" 40	"	9/10	"		1											
" 40	"	9/10	"		$\frac{1}{2}$											
" 40	"	9/10	"		2											
" 40	"	9/10	"		3											
" 40	"	9/7	"		2											
" 40	"	9/4	"		$\frac{1}{2}$											
" 40	"	9/3	"		5 $\frac{1}{2}$											
" 40	"	9/3	"		1											
" 40	"	9/3	"		$\frac{1}{2}$											
" 40	"	9/2	"		2											
" 40	"	9/2	"		1											
" 40	"	9/2	"		1											
" 40	"	9/1	"		1 $\frac{1}{2}$											
" 40	"	8/31	"		1											
" 40	"	9/11	"		1											
" 40	"	9/11	"		1 $\frac{1}{2}$											
" 41	A.B. Watson	9/15	336	31 $\frac{1}{2}$												
" 42	"	9/8	"	3												
" 43	C. Chaquette	9/10	338		2											
" 43	"	9/4	"			9										
" 43	"	9/3	"			9										
" 43	"	9/2	"			5 $\frac{1}{2}$										
" 43	"	9/1	"	2												
" 43	"	8/31	"			9										
" 43	"	8/30	"			4										
Carried forward				1011 $\frac{1}{2}$	458 $\frac{1}{4}$	320 $\frac{3}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$

et No. 12

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				1011 $\frac{1}{2}$	458 $\frac{1}{4}$	320 $\frac{3}{4}$	463 $\frac{1}{2}$								63 $\frac{1}{2}$	
Amson 43	C. Chaquette	9/11	338	6	3											
" 44	"	9/16	"			9										
" 44	"	9/15	"			2										
" 44	"	9/14	"			1										
" 44	"	9/15	"			2										
" 45	V. Williams	9/20	323		1											
" 45	"	9/20	"		6											
" 45	"	9/18	"		8 $\frac{1}{2}$											
" 45	"	9/17	"		2											
" 45	"	9/17	"		2											
" 45	"	9/16	"		1 $\frac{1}{2}$											
" 45	"	9/15	"		2											
" 45	"	9/15	"		3											
" 45	"	9/14	"		7 $\frac{1}{2}$											
" 45	"	9/13	"		7 $\frac{1}{2}$											
" 45	"	9/8	"		$\frac{1}{2}$											
" 45	"	9/8	"		1 $\frac{1}{2}$											
" 45	"	9/1	"		2											
" 45	"	8/31	"		2											
" 45	"	8/30	"		3 $\frac{1}{2}$											
" 45	"	8/30	"		2											
" 45	"	9/21	"		1											
" 45	"	9/21	"		$\frac{1}{2}$											
" 46	J.B.Pennycott	9/18	324		5											
" 46	"	9/18	"		24 $\frac{1}{4}$											
" 46	"	9/17	"		9											
" 46	"	9/16	"		9											
" 46	"	9/15	"		12 $\frac{3}{4}$											
" 46	"	9/14	"		9											
Brought forward				1017 $\frac{1}{2}$	584 $\frac{1}{4}$	334 $\frac{3}{4}$	463 $\frac{1}{2}$								63 $\frac{1}{2}$	

Sheet No. 13

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				1017 $\frac{1}{2}$	584 $\frac{1}{4}$	334 $\frac{3}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$
Adamson 46	J.B.Pennycott	9/13	324		6											
" 46	"	9/12	"		18			Sunday								
" 46	"	9/22	"		6											
" 47	"	9/10	"		6											
" 47	"	9/9	"		18			Holiday								
" 47	"	9/7	"		2											
" 47	"	9/6	"		9											
" 47	"	9/5	"		18			"								
" 47	"	9/4	"		7											
" 47	"	9/2	"		2											
" 47	"	9/1	"		8 $\frac{3}{4}$											
" 47	"	8/31	"		6 $\frac{3}{4}$											
" 47	"	8/30	"		9											
" 47	"	9/11	"		4 $\frac{1}{2}$											
" 48	Jno. C. Mello	9/13	317		14 $\frac{1}{4}$											
" 48	"	9/19	"		3)			Sunday								
" 48	"	9/19	"		3)			"								
" 48	"	9/19	"			9		"								
" 48	"	9/20	"		1 $\frac{1}{2}$											
" 48	"	9/21	"	4												
" 48	"	9/26	"			36										
" 49	"	8/28	"			9										
" 49	"	8/27	"	7												
" 50	"	8/30	"			4 $\frac{1}{2}$										
" 50	"	8/31	"			25 $\frac{3}{4}$										
" 50	"	9/2	"	2												
" 50	"	9/2	"	1												
" 50	"	9/2	"			13 $\frac{1}{2}$										
" 50	"	9/4	"			14 $\frac{1}{4}$										
Carried forward				1031 $\frac{1}{2}$	727	446 $\frac{3}{4}$	463 $\frac{1}{2}$									63 $\frac{1}{2}$



Sheet No. 14

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				1031½	727	446¾	463½									63½
Amson 50	J. C. Mello	9/5	317			24		Holiday								
" 50	"	9/6	"			26		"								
" 50	"	9/8	"	3				"								
" 50	"	9/9	"	16				"								
" 50	"	9/10	"	14¼				"								
" 50	"	9/10	"			14¼		"								
" 50	"	9/11	"			14¼		"								
" 51	J. Chandler	9/20	316	9												
" 51	"	9/19	"	13				Sunday								
" 51	"	9/17	"	9												
" 51	"	9/16	"	7												
" 51	"	8/28	"	7												
" 51	"	9/21	"	7												
" 52	"	8/30	"	4												
" 52	"	8/31	"	9												
" 52	"	9/1	"	9½												
" 52	"	9/2	"	17¼												
" 52	"	9/3	"	9												
" 52	"	9/4	"	9												
" 52	"	9/5	"	18				Sunday								
" 52	"	9/6	"	18				Holiday								
" 52	"	9/7	"	12¾												
" 52	"	9/8	"	8												
" 52	"	9/10	"	7												
" 52	"	9/11	"	5												
" 53	W.B.Thomas	9/1	315	5												
" 53	"	9/5	"	9				Sunday								
" 53	"	9/5	"	7		7		"								
" 53	"	9/6	"	6		12		Holiday								
Brought forward				1270¼	727	544¼	463½									63½

Sheet No. 15

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Brought forward				1270 $\frac{1}{4}$	727	544 $\frac{1}{4}$	463 $\frac{1}{2}$								63 $\frac{1}{2}$
Adamson 53	W.B.Thomas	9/1	315	2 $\frac{1}{2}$											
" 53	"	9/6	"					Holiday							
" 53	"	9/7	"	2 $\frac{1}{2}$		4)									
" 53	"	9/8	"	6 $\frac{1}{4}$		8 $\frac{1}{4}$ )									
" 53	"	9/9	"	14		4		Holiday							
" 53	"	9/10	"	2											
" 54	"	9/12	"	9		9		Sunday							
" 54	"	9/12	"	5 $\frac{1}{2}$				"							
" 54	"	9/15	"	1		1									
" 54	"	9/17	"	3		2									
" 54	"	9/19	"			8		Sunday							
" 54	"	9/21	"	3		26 $\frac{1}{2}$									
" 55	"	8/25	"	7											
" 55	"	8/26	"	9											
" 55	"	8/27	"												
" 55	"	8/28	"												
" 56	Jos. Sucher	9/1	314	9											
" 56	"	9/3	"	4 $\frac{1}{2}$											
" 56	"	9/4	"	19 $\frac{1}{4}$											
" 56	"	9/8	"	7											
" 57	"	9/13	"	9											
" 57	"	9/14	"	9											
" 57	"	9/15	"	9											
" 57	"	9/16	"	9											
" 57	"	9/20	"	6											
" 57	"	9/22	"	4 $\frac{1}{2}$											
" 57	"	9/21	"	11 $\frac{3}{4}$											
" 58	Fenton Young	9/10	"	9											
" 58	"	9/7	"	12 $\frac{3}{4}$											
Carried forward				1454 $\frac{1}{4}$	727	607	463 $\frac{1}{2}$								63 $\frac{1}{2}$

et No. 16

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ight forward				1454 $\frac{1}{4}$	727	607	463 $\frac{1}{2}$									63 $\frac{1}{2}$
nison 58	Fenton Young	9/6	313	18				Sunday								
" 58	"	9/5	"	18				Holiday								
" 58	"	9/3	"	4												
" 58	"	9/2	"	6												
" 58	"	9/1	"	6 $\frac{1}{2}$												
" 58	"	9/11	"	6												
" 59	"	8/28	"	5												
" 60	"	9/15	"	16 $\frac{1}{2}$												
" 60	"	9/16	"	4 $\frac{1}{2}$												
" 60	"	9/17	"	6												
" 61	Gus Albers	9/12	312	18												
" 62	"	9/28	"	3												
" 63	D. Doig, Jr.	8/27	311	21												
" 63	"	8/28	"	13 $\frac{1}{2}$												
" 64	"	8/31	"													
" 64	"	8/31	"	3 $\frac{1}{2}$	2											
" 64	"	8/30	"			7										
" 64	"	8/29	"			24		Sunday								
" 64	"	9/2	"		2											
" 64	"	9/6	"		18			Holiday								
" 64	"	9/8	"	3	9 $\frac{3}{4}$											
" 64	"	9/9	"		3)			Holiday								
" 64	"				3)											
" 64	"	9/10	"		12 $\frac{3}{4}$											
" 64	"	9/11	"		12 $\frac{3}{4}$											
" 65	"	9/12	"		23			Sunday								
" 65	"	9/13	"		12 $\frac{3}{4}$											
" 65	"	9/14	"		12 $\frac{3}{4}$											
" 65	"	9/15	"		6											
" 65	"	9/17	"		12 $\frac{3}{4}$											
ted forward				1606 $\frac{3}{4}$	857 $\frac{1}{2}$	638	463 $\frac{1}{2}$									63 $\frac{1}{2}$

Sheet No. 17

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	
Brought forward				1606 $\frac{3}{4}$	857 $\frac{1}{2}$	638	463 $\frac{1}{2}$									63 $\frac{1}{2}$
Adamson 66	Clen Perrsons	8/27	318				9									
" 66	"	8/28	"				9									
" 67	"	9/3	"	9												
" 67	"	9/4	"	8												
" 67	"	9/1	"			9										
" 67	"	8/31	"			9										
" 67	"	9/7	"	7	2											
" 68	"	9/14	"	8												
" 69	Jno. Ross	9/15	348	1 $\frac{1}{2}$												
" 69	"	9/14	"	9												
" 70	W. P. Hicks	9/13	388	1 $\frac{1}{2}$												
" 70	"	9/15	"	2 $\frac{1}{2}$												
" 70	"	"	"	1												
" 70	"	"	"	2												
" 70	"	9/16	"	1 $\frac{1}{2}$												
" 70	"	9/17	"	1												
" 70	"	"	"	3 $\frac{1}{2}$												
" 70	"	"	"	1 $\frac{1}{2}$												
" 70	"	9/18	"	4 $\frac{1}{2}$												
" 70	"	9/20	"	3 $\frac{1}{2}$												
" 71	N. Vason	9/13	387				1									
" 71	"	9/16	"				1									
" 72	"	8/30	"				2									
" 72	"	8/31	"				3 $\frac{1}{2}$									
" 72	"	9/1	"				3									
" 72	"	9/2	"				8									
" 72	"	9/7	"				4 $\frac{1}{2}$									
" 72	"	9/8	"				7									
" 72	"	9/10	"				4									
Carried forward				1671 $\frac{3}{4}$	859 $\frac{1}{2}$	674	497 $\frac{1}{2}$									63 $\frac{1}{2}$



Sheet No. 18

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinis	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ught forward				1671 $\frac{3}{4}$	859 $\frac{1}{2}$	674	497 $\frac{1}{2}$									63 $\frac{1}{2}$
amson 73	N. Vason	8/27	387				3									
" 73	"	8/28	"				6									
" 74	Jose Francisco	8/27	386				3									
" 74	"	8/28	"				5									
" 75	"	9/13	"				1									
" 76	"	8/30	"				5									
" 76	"	8/31	"				4 $\frac{1}{2}$									
" 76	"	9/1	"				6									
" 76	"	9/2	"				9									
" 76	"	9/3	"				4									
" 76	"	9/3	"				3									
" 76	"	9/4	"				4									
" 76	"	9/4	"				3									
" 76	"	9/7	"				3									
" 76	"	9/7	"				2									
" 76	"	9/8	"				2									
" 76	"	9/9	"				3									
" 77	Geo. A. Dunne	8/30	385	2												
" 77	"	8/31	"	8												
" 77	"	9/6	"		18			Holiday								
" 77	"	8/30	"													
" 77	"	8/31	"													
" 77	"	9/6	"													
" 78	Rud. Dolensky	8/28	377	9												
" 79	"	8/30	"	9												
" 79	"	8/31	"	9												
" 79	"	9/1	"	2												
" 79	"	9/1	"	8 $\frac{1}{4}$												
" 79	"	9/2	"	13 $\frac{3}{4}$												
ied forward				1732 $\frac{3}{4}$	877 $\frac{1}{2}$	674	564									63 $\frac{1}{2}$

Sheet No. 19

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator
B Brought forward				1732 $\frac{3}{4}$	877 $\frac{1}{2}$	674	564								63 $\frac{1}{2}$
A Adamson	79 Rud.Dolensky	9/3	377	9											
"	79 "	9/4	"	9											
"	80 J. Jackson	9/1	370	4											
"	80 "	9/1	"	3											
"	80 "	9/1	"	9 $\frac{3}{4}$											
"	81 B. Materne	8/30	360	6 $\frac{1}{2}$											
"	81 "	8/31	"	4 $\frac{1}{2}$											
"	82 J.B.Gordon	9/14	368	9											
"	82 "	9/15	"	16 $\frac{1}{2}$											
"	82 "	9/16	"	10 $\frac{1}{4}$											
"	82 "	9/17	"	6											
"	82 "	9/21	"	9											
"	83 B. Materne	8/28	360	9											
"	84 M.B.Souza	9/10	367	8											
"	85 "	9/13	"		2 $\frac{1}{2}$										
"	85 "	9/14	"		3)										
"	85 "	9/15	"		4)										
"	85 "	9/16	"		3										
"	85 "	9/16	"		10 $\frac{1}{2}$										
"	85 "	9/22	"		$\frac{1}{2}$										
"	86 H.Sutherland	9/1	366		7										
"	86 "	9/2	"			9									
"	86 "	9/3	"		6										
"	86 "	9/4	"		1										
"	87 J.Cameron	8/23	352	7											
"	88 T.Pickersgill	9/17	351	$\frac{1}{2}$											
"	88 "	9/20	"	$\frac{1}{2}$											
"	89 "	9/8	"	$\frac{1}{2}$											
"	89 "	9/10	"	$\frac{3}{4}$											
"	89 "	9/11	3	2											
C: Carried forward				1857 $\frac{3}{4}$	915	683	564								63 $\frac{1}{2}$

No. 20

Inhibit number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
forward				1857 $\frac{3}{4}$	915	683	564									63 $\frac{1}{2}$
on 90	S. D. Doig	9/16	350				6									
90	"	9/20	"				9									
91	"	9/8	"				8									
91	"	9/10	"				7									
91	"	9/11	"				4 $\frac{1}{2}$									
92	Geo. Cuthbert	8/30	349	1												
92	"	9/14	"		2											
92	"	9/18	"	3 $\frac{1}{2}$												
93	"	9/10	"		2											
94	Wm. Schmidt	8/29	318			8		Sunday								
94	"	8/30	"	2		4										
94	"	8/30	"			8 $\frac{1}{4}$										
94	"	8/31	"			17 $\frac{1}{4}$										
94	"	9/1	"			17 $\frac{1}{4}$										
94	"	9/2	"	4 $\frac{1}{2}$		14 $\frac{1}{4}$										
94	"	9/3	"			3										
94	"	9/3	"			1 $\frac{1}{2}$ & 7 $\frac{1}{2}$										
94	"	9/3	"	8 $\frac{1}{4}$												
94	"	9/4	"			9 $\frac{3}{4}$										
94	"	9/5	"			18		Holiday								
94	"	9/6	"			6		"								
94	"	9/6	"	9				"								
94	"	9/6	"			16		"								
94	"	9/7	"			12 $\frac{3}{4}$										
94	"	9/8	"			9										
94	"	9/9	"			8		Holiday								
94	"	9/10	"			1										
95	"	8/27	"	12												
96	"	9/18	"			1 $\frac{1}{2}$										
forward				1898	919	845	598 $\frac{1}{2}$									63 $\frac{1}{2}$

Sheet No. 21

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	
Brought forward				1898	919	845	598 $\frac{1}{2}$									63 $\frac{1}{2}$
Adamson 96	Wm.Schmidt	9/19	318		22											
" 97	R. Turner	9/6	319	21					Holiday							
" 97	"	9/7	"	8												
" 97	"	9/8	"	5												
" 97	"	9/9	"	18												
" 98	"	9/12	"	18					Sunday							
" 98	"	9/19	"	6					"							
" 99	R.Adamson	9/13	320	4												
" 99	"	9/14	"	3												
" 99	"	9/15	"	4												
" 99	"	9/16	"	2												
" 99	"	9/16	"	3 $\frac{3}{4}$												
" 99	"	9/17	"	2												
" 99	"	9/20	"	2												
" 99	"	9/20	"	3												
" 99	"	9/20	"	1 $\frac{1}{2}$												
" 99	"	9/2	"	3												
" 99	"	9/2	"	4 $\frac{1}{2}$												
" 100	"	8/24	"	2												
" 100	"	8/27	"	4												
" 100	"	8/27	"	2 $\frac{1}{4}$												
" 100	"	8/28	"	4												
" 101	"	8/30	"	5												
" 101	"	8/31	"	3												
" 101	"	9/1	"	3												
" 101	"	9/2	"	4												
" 101	"	9/3	"	3												
" 101	"	9/3	"	4 $\frac{1}{2}$												
" 101	"	9/4	"	6												
Carried forward				2047 $\frac{1}{2}$	941	845	598 $\frac{1}{2}$									63 $\frac{1}{2}$



t No. 22

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ght forward				2047 $\frac{1}{2}$	941	845	598 $\frac{1}{2}$									63 $\frac{1}{2}$
nson 101	R. Adamson	9/8	320	3												
" 101	"	9/8	"	3												
" 101	"	9/8	"	$\frac{3}{4}$												
" 101	"	9/9	"	14												
" 101	"	9/10	"	4												
" 101	"	9/11	"	6												
" 102	F. C. Heath	8/27	321		1 $\frac{1}{2}$											
" 102	"	8/30	"		1											
" 102	"	8/30	"		3 $\frac{1}{2}$											
" 102	"	8/31	"		9											
" 102	"	9/3	"		4 $\frac{1}{2}$											
" 102	"	9/4	"		3											
" 102	"	9/7	"		8											
" 102	"	9/8	"		$\frac{1}{2}$											
" 102	"	9/10	"		7											
" 102	"	9/11	"		1											
" 103	"	9/13	"		2											
" 103	"	9/14	"	1 $\frac{1}{2}$												
" 103	"	9/15	"		3											
" 103	"	"	"		2 $\frac{1}{4}$											
" 103	"	9/16	"													
" 103	"	9/16	"		1 $\frac{1}{2}$											
" 103	"	9/16	"		1											
" 103	"	9/16	"		2											
" 103	"	9/16	"		2											
" 103	"	9/17	"		1 $\frac{1}{2}$											
" 103	"	"	"		2 $\frac{1}{2}$											
" 103	"	9/18	"		2 $\frac{1}{2}$											
" 103	"	9/20	"		$\frac{1}{4}$											
rd forward				2079 $\frac{3}{4}$	1000 $\frac{1}{2}$	845	598 $\frac{1}{2}$									63 $\frac{1}{2}$

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Brought forward				2079 $\frac{3}{4}$	1000 $\frac{1}{2}$	845	598 $\frac{1}{2}$								631
Adamson 103	F. C. Heath	9/21	321		2										
" 103	"	9/21	"		1 $\frac{1}{2}$										
" 103	"	9/21	"		1										
" 103	"	9/21	"		6										
" 103	"	9/22	"		3										
" 104	C. Peaslee	8/28	334	6 $\frac{1}{2}$											
" 105	W. Bonick	9/19	359	18				Sunday							
" 105	"	9/20	"	4											
" 106	H. Beckett	9/10	369	5 $\frac{1}{2}$											
" 107	Jas. Furman	8/31	541		2 $\frac{3}{4}$	11 $\frac{1}{4}$									
" 107	"	9/2	541			12 $\frac{3}{4}$									
" 107	"	9/3	"			12 $\frac{3}{4}$									
" 107	"	9/4	"		4 $\frac{1}{2}$	4 $\frac{1}{2}$									
" 107	"	9/4	"		3 $\frac{3}{4}$										
" 107	"	9/5	"			4		Holiday							
" 107	"	9/6	"	23				"							
" 107	"	9/7	"		3										
" 107	"	9/7	"		3 $\frac{3}{4}$										
" 107	"	9/8	"		5										
" 107	"	9/11	"		9	3 $\frac{3}{4}$									
" 108	W. P. Hicks	8/30	388	5 $\frac{1}{2}$											
" 108	"	8/31	"	9											
" 108	"	9/1	"	3 $\frac{1}{2}$ )											
" 108	"			5 $\frac{1}{2}$ )											
" 108	"	9/2	"	1											
" 108	"	9/4	"	1											
" 108	"	9/7	"	$\frac{1}{2}$											
" 108	"	9/7	"	4											
" 108	"	9/7	"	$\frac{1}{2}$											
" 108	"	9/8	"	5											
" 108	"	9/10	"	4											
Carried forward				2176 $\frac{1}{4}$	1045 $\frac{1}{4}$	894	598 $\frac{1}{2}$								631

No. 24

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Right forward				2176 $\frac{1}{4}$	1045 $\frac{1}{4}$	894	598 $\frac{1}{2}$									
Hanson 109	W. P. Hicks	8/26	388	5												63 $\frac{1}{2}$
" 109	"	8/27	"	3 $\frac{1}{2}$												
" 109	"	8/28	"	6												
" 110	Jno. Moork	9/4	504		2 $\frac{1}{2}$											
" 111	A. L. Hanson	9/14	553	2												
" 112	C. Holinquist	9/5	550				12	Holiday								
" 112	"	9/7	"				9									
" 113	Ed Acosta	9/16	543				3									
" 113	"	9/17	"				1									
" 113	"	9/18	"				1									
" 114	Ed Brauns	9/8	566	3 $\frac{1}{2}$												
" 115	"	9/15	"	5												
" 115	"	9/16	"	5 $\frac{1}{2}$												
" 116	Joe Zaber	9/11	540	6												
" 117	Jas. Furman	9/12	541		2			Sunday								
" 117	"	9/12	"		2											
" 117	"	9/12	"			5										
" 117	"	9/13	"	3	9 $\frac{3}{4}$											
" 117	"	9/14	"	3 $\frac{3}{4}$	1	5										
" 117	"	9/15	"		10 $\frac{1}{2}$											
" 117	"	9/18	"			6										
" 117	"	9/18	"			4 $\frac{1}{2}$										
" 117	"	9/19	"		6)			Sunday								
" 117	"	9/19	"		6)			"								
" 117	"	9/19	"		2)			"								
" 117	"	9/19	"		6)											
" 118	Ed Acosta	8/31	543				2 $\frac{1}{2}$									
" 118	"	9/1	"				4									
" 118	"	9/2	"				2									
" 118	"	9/3	"				5									
Left forward				2219 $\frac{1}{2}$	1093	914 $\frac{1}{2}$	638									63 $\frac{1}{2}$

Sheet No. 25

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				2219 $\frac{1}{2}$	1093	914 $\frac{1}{2}$	638									
Adamson 118	Ed Acosta	9/4	543				9								63 $\frac{1}{2}$	
" 118	"	9/7	"				5									
" 118	"	9/8	"				2									
" 119	W. Stewart	9/13	545			9										
" 119	"	9/15	"			1										
" 119	"	9/18	"			4 $\frac{1}{2}$										
" 120	"	9/1	"	9												
" 120	"	9/3	"			9										
" 120	"	9/4	"			7										
" 120	"	9/7	"	7												
" 121	M. W. Albers	8/31	548		13 $\frac{1}{2}$											
" 121	"	9/2	"		13											
" 121	"	9/3	"		12 $\frac{3}{4}$											
" 121	"	9/4	"		12 $\frac{3}{4}$											
" 121	"	9/7	"		12 $\frac{3}{4}$											
" 121	"	9/9	"		11)			Holiday								
" 121	"	9/9	"		6)			"								
" 121	"	9/10	"		6											
" 121	"	9/11	"		3 )											
" 121	"	"	"		4 $\frac{1}{4}$ )											
" 122	J. Reed	9/5	552	18				Sunday								
" 122	"	9/6	"		6			Holiday								
" 122	"	9/6	"		6			"								
" 122	"	9/6	"		4			"								
" 123	L. DePasquale	9/10	555	1 $\frac{1}{2}$												
" 123	"	9/11	"	$\frac{1}{2}$												
" 123	"	9/11	"	1 $\frac{1}{2}$												
" 123	"	9/11	"	1												
" 123	"	9/11	"	4												
" 123	"	9/11	"	$\frac{1}{2}$												
Carried forward				2263 $\frac{1}{2}$	1204	945	654								63 $\frac{1}{2}$	



No. 26

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Light forward				2263 $\frac{1}{2}$	1204	945	654									63 $\frac{1}{2}$
son 124	D. Pasquale	9/13	555	9												
" 124	"	9/15	"	3												
" 124	"	9/15	"	1 $\frac{1}{2}$												
" 124	"	9/15	"	1 $\frac{1}{2}$												
" 124	"	9/16	"	5 $\frac{1}{2}$												
" 124	"	9/16	"	$\frac{1}{2}$												
" 124	"	9/16	"	1												
" 124	"	9/17	"	4												
" 124	"	"	"	1												
" 124	"	9/18	"	8												
" 125	O. Sweeny	9/8	556	2												
" 125	"	9/10	"	9												
" 125	"	9/11	"	5												
" 126	"	9/13	"	5												
" 126	"	9/14	"	7												
" 127	J. Williams	9/12	557		14			Sunday								
" 127	"	9/14	"		12 $\frac{3}{4}$											
" 127	"	9/17	"		8											
" 127	"	9/19	"					Sunday								
" 128	"	8/29	"		23			Sunday								
" 128	"	9/4	"		12 $\frac{3}{4}$											
" 128	"	9/5	"	10				Sunday								
" 128	"	9/6	"		23			Holiday								
" 128	"	9/8	"		2											
" 128	"	9/10	"		2											
" 128	"	9/10	"		9 $\frac{3}{4}$											
" 128	"	9/11	"		12 $\frac{3}{4}$											
" 129	J. Coleman	9/8	559	8 $\frac{1}{4}$												
" 130	S. Greve	9/8	562		11 $\frac{3}{4}$											
ed forward				2344 $\frac{3}{4}$	1335 $\frac{1}{4}$	945	654									63 $\frac{1}{2}$

Sheet No. 27

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				2344 $\frac{3}{4}$	1335 $\frac{1}{4}$	945	654									63 $\frac{1}{2}$
Adamson 130	S. Greve	9/10	562		4 $\frac{1}{2}$											
" 130	"	9/11	"		6 $\frac{1}{2}$											
" 131	"	9/13	"		9											
" 131	"	9/14	"		6 $\frac{1}{2}$											
" 131	"	9/15	"		5											
" 131	"	9/18	"		2											
" 131	"	9/17	"		1											
" 131	"	9/20	"		5											
" 131	"	9/21	"		6 $\frac{1}{2}$											
" 132	J. Blake	9/1	551			5 $\frac{1}{2}$										
" 132	"	9/2	"			4										
" 132	"	"	"			2 $\frac{1}{2}$										
" 132	"	9/3	"			2										
" 132	"	9/4	"			9										
" 132	"	9/7	"			2										
" 132	"	9/8	"			1										
" 133	T. McConkey	8/30	530	4												
" 133	"	9/1	"	7												
" 133	"	9/2	"	5												
" 133	"	9/3	"	4												
" 134	"	9/10	"	4												
" 135	J. Blake	9/14	531			3										
" 135	"	9/15	"			4 $\frac{1}{2}$										
" 135	"	9/16	"		2 $\frac{1}{2}$											
" 135	"	9/18	"		4											
" 135	"	9/21	"			2										
Carried forward				2368 $\frac{3}{4}$	1387 $\frac{3}{4}$	980 $\frac{1}{2}$	654									63 $\frac{1}{2}$

et No. 28

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ught forward				2368 <sup>3</sup> / <sub>4</sub>	1387 <sup>3</sup> / <sub>4</sub>	980 <sup>1</sup> / <sub>2</sub>	654									63 <sup>1</sup> / <sub>2</sub>
mson 136	W.Robertson	8/30	510	9												
" 136	"	8/31	"	4 <sup>1</sup> / <sub>2</sub>												
" 137	Wm. Albee	9/12	548		1 <sup>1</sup> / <sub>2</sub>			Sunday								
" 137	"	9/12	"	2				"								
" 137	"	9/12	"	4				"								
" 137	"	9/12	"	7	2 <sup>1</sup> / <sub>2</sub>			"								
" 137	"	9/12	"		6			"								
" 137	"	9/15	"		6 <sup>1</sup> / <sub>2</sub>											
" 137	"	9/15	"		4 <sup>1</sup> / <sub>4</sub>											
" 137	"	9/16	"		6											
" 138	Wm. Boehle	8/30	529	4 <sup>1</sup> / <sub>2</sub>												
" 138	"	8/31	"	5												
" 139	"	9/18	"	2												
" 139	"	9/18	"	3												
" 140	W.Robertson	8/28	510	9												
" 141	"	9/13	"	1												
Boyd 1	Fred Boyd	8/24	337		3											
" 2	"	8/26	"		9											
" 3	"	8/27	"	9												
" 4	"	8/28	"		9											
" 5	"	8/29	"		18			Sunday								
" 7	"	8/30	"		5											
" 8	"	8/31	"		4											
" 9	"	9/1	"		6											
" 9	"	9/1	"		6											
" 10	"	9/5	"		18			Sunday								
" 11	"	9/6	"		7			Holiday								
" 12	"	9/7	"		1											
" 12	"	9/7	"		1 <sup>1</sup> / <sub>2</sub>											
ed forward				2428 <sup>3</sup> / <sub>4</sub>	1502	980 <sup>1</sup> / <sub>2</sub>	654									63 <sup>1</sup> / <sub>2</sub>

Sheet No. 29

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Brought forward				2428 $\frac{3}{4}$	1502	980 $\frac{1}{2}$	654								63 $\frac{1}{2}$
Boyd 13	Fred Boyd	9/9	337		18			Holiday							
" 14	"	9/10	"		9										
" 15	"	9/11	"		19 $\frac{1}{4}$										
" 16	"							Clock card							
" 17	"	9/14	"		6 $\frac{3}{4}$										
" 18	"	9/15	"		6										
" 19	"	9/12	"		11			Sunday							
" 20	"	9/16	"		3										
Adamson 22 $\frac{1}{2}$ and Allen 1	Martiolla	9/24	344				2								
Carried forward				2428 $\frac{3}{4}$	1575	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$



No. 30

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Boils	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ight forward																
Donald 1	Macdonald	9/14	611	2428 $\frac{3}{4}$	1575	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	2
" 1	"	9/14	"													4 $\frac{1}{4}$
" 1	"	8/25	"													1
" 3	"	8/26	"													2
" 4	"	8/27	"													4
" 5	"	9/4	"													2 $\frac{1}{2}$
" 6	"		611					Clock card								
" 7	"		611					Clock card								
" 7 $\frac{1}{2}$	"		611					" "								
" 8	M. Merkeli	9/15	613													$\frac{1}{2}$
" 9	"							Clock card								
" 10	P. B. Young	9/13	612													2 $\frac{1}{2}$
" 11	"		612					Clock card								
" 12	"	8/27	612													5 $\frac{1}{2}$
" 13	"	8/31	612													8
" 14	"	9/1	612													7
" 15	"	9/2	612													4 $\frac{1}{2}$
" 16	"	9/4	612													3
" 17	"	9/7	612													1
" 18	"	9/8	612													2
" 19	"	9/10	612													1
" 20	"	9/11	612													1
" 21	"		"					Clock card								
" 22	"		"					"								
ford 1	C. Grotefend	9/23	1	4 $\frac{1}{2}$												
" 2	L. Schaarky	9/23	4	1												
" 3	Nolan	9/23	6		3											
" 4	Jos. Turner	9/22	9	2												
" 5	"	9/23	9		3 $\frac{1}{2}$											
l forward				2436 $\frac{1}{4}$	1581 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{3}{4}$

Sheet No. 31

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				2436 $\frac{1}{4}$	1581 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{1}{2}$
Grotefend	5 Jos. Turner	9/23	9		2											
"	6 Jno. Seelos	9/23	13	2												
"	7 A. Campbell	9/22	14	1 $\frac{1}{2}$												
"	8 "	9/23	"	2 $\frac{1}{2}$												
"	8 "	9/23	"	1 $\frac{1}{2}$												
"	8 "	9/23	"	4 $\frac{1}{2}$												
"	9 "	9/24	"	6												
G. LaViolette	1 G. LaViolette	8/24	507	2 $\frac{1}{4}$												
"	2 "	8/27	"	5												
"	3 "	9/10	"	2												
"	3 "	9/10	"	2												
"	4 "	9/11	"	1												
"	4 "	9/11	"	2												
"	5 "	8/30	"													
"	5 "	"	"	4												
"	5 "	"	"	1												
"	5 "	"	"													
"	6 "	8/31	"	2												
"	7 "	9/1	"	3												
"	8 "	9/8	"	2												
"	8 "	"	"	3												
"	9 "	9/13	"	1												
"	9 "	9/13	"	2												
"	10 "	9/14	"	1												
"	10 "	9/14	"	1												
"	10 "	9/14	"	1												
"	11 "	9/16	"	1												
"	11 "	9/16	"	2												
"	12 "	9/20	"	3				Sunday								
Carried forward				2495 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{1}{2}$

et No. 32

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ight forward				2495 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{3}{4}$
LaViolette 13	G. LaViolette	9/22	507	1												
" 14	"	9/23	"	1												
" 15	"	9/24	"	1												
" 15	"	9/24	"	3 $\frac{1}{4}$												
I. Roberts 1	R. H. Roberts	9/3	302	3												
" 2	"	9/4	"	1 $\frac{1}{2}$												
" 3	"	9/5	"	25					Sunday							
" 4	"	9/6	"	18					Holiday							
" 5	"	9/7	"	3												
" 6	"	9/8	"	6												
" 7	"	9/9	"	18					Holiday							
" 8	"	9/10	"	7 $\frac{1}{2}$												
" 9	"	9/11	"	3												
" 10	"	9/12	"	19					Sunday							
" 11	"	9/13	"	1 $\frac{1}{2}$												
" 12	"	9/14	"	4 $\frac{1}{2}$												
" 13	"	9/15	"	1 $\frac{1}{2}$												
" 14	"	9/16	"	3												
" 15	"	9/18	"	3												
" 16	"	9/19	"	10												
" 17	"	9/20	"	3 $\frac{3}{4}$												
" 18	"	9/21	"	6												
" 19	"		"						Clock card							
" 20	"		"						"							
in 1	S. Cronin	9/3	177	10 $\frac{1}{2}$												
" 2	"	9/4	"	5 $\frac{1}{4}$												
" 3	"	9/5	"	16					Sunday							
" 4	"	9/6	"	24					Holiday							
" 5	"	9/7	"	9												
ed forward				2700 $\frac{3}{4}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{3}{4}$

Sheet No. 33

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draft man
Brought forward				2700 $\frac{3}{4}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{1}{2}$
Cronin 6	S. Cronin	9/9	177	6				Holiday								
" 7	"	9/10	"	1 $\frac{1}{2}$												
" 8	"	9/11	"	8 $\frac{1}{4}$												
" 9	"	9/12	"	18				Sunday								
" 10	"	9/13	"	7 $\frac{1}{2}$												
" 11	"	9/15	"	4 $\frac{1}{2}$												
" 12	"	9/17	"	4 $\frac{1}{2}$												
" 13	"	9/20	"	4 $\frac{1}{2}$												
" 14	"	"	"					Clock cards								
" 15	"	"	"					"								
Carried forward				2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{1}{2}$



et No. 34

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
ght forward				2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656								63 $\frac{1}{2}$	51 $\frac{3}{4}$
2	A. Beaton	9/10	117					1 $\frac{1}{2}$								
"	3 F.Campbell	9/14	115					1								
"	"	9/14	"					2								
"	"	9/15	"					2								
"	"	9/20	"					8								
"	"	9/21	"					1								
"	"	9/21	"					1				$\frac{1}{2}$				
"	"	9/21	"					2				2				
"	"	9/22	"					4 $\frac{1}{2}$								
"	"	9/24	"					2								
"	"							Clockcards								
"	10 H. Olsen	9/14	117					7 $\frac{1}{2}$								
"	"	9/15	"					1 $\frac{1}{2}$								
"	"	9/15	"					4				2				
"	"	9/16	"					1 $\frac{1}{2}$								
"	"	9/16	"					2				$\frac{1}{2}$				
"	"	9/18	"					2 $\frac{1}{2}$								
"	"							Clockcards								
"	15 T.Campbell	8/25	115					$\frac{1}{2}$								
"	"	8/26	"					1 $\frac{1}{2}$								
"	"	8/27	"					1								
"	"	8/28	"					7								
"	"							Clockcards								
"	20 Jno.Edwards	9/15	118					1				1				
"	"	9/16	"									2 $\frac{1}{2}$				
"	"	9/16	"					3				1				
"	"	9/17	"					4 $\frac{1}{2}$								
"	"	9/17	"					1 $\frac{1}{2}$								
"	"	9/18	"					1								
"	"	9/18	"					1 $\frac{1}{2}$								
ed forward				2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	66 $\frac{1}{2}$				9 $\frac{1}{2}$			63 $\frac{1}{2}$	51 $\frac{3}{4}$

Sheet No. 35

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				2755½	1583½	980½	656	66½				9½			63½	51
Allen	24 J. Edwards	9/20	118					1)								
"	25 "	9/21	"					2)								
"	26 "	9/22	"					1				½				
"	27 "							1				½				
"	28 H.O.Erickson	8/30	119							Clockcards						
"	"	8/30	"					½								
"	29 "	8/31	"					2½								
"	30 "	9/2	"									2				
"	31 "	9/7	"					1								
"	32 "	9/8	"					1								
"	33 "							1½				1				
"	34 "	8/27	"							Clockcards						
"	35 "	8/28	"									1½				
"	36 "							½								
"	37 "	9/12	"							Clockcards						
"	38 "	9/13	"					1		Sunday						
"	39 "	9/15	"					1								
"	40 "	9/17	"					½				½				
"	41 "	9/17	"					1½								
"	41 "	9/21	"					2								
"	41 "	9/21	"					2				1				
"	42 "	9/22	"					2				1				
"	43 "									Clockcards						
"	44 G. Scala	9/15	121					3								
"	45 "									Clockcards						
"	46 Jno. Edwards	8/27	118									3				
"	47 "	8/28	"									3				
"	48 "	8/31	"									3½				
"	49 "	9/4	"					2½								
"	50 "	9/3	"					1½				1				
Carried forward				2755½	1583½	980½	656	94½				28			63½	51

et No. 36

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter-sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Light forward				2755½	1583½	980½	656	94½				28			63½	51¾
51	Jno. Edwards	9/11	118					2				½				
"	"	9/11	"					½				½				
"	"	9/11	"					½								
"	52	"						Clockcards								
"	53	T. Campbell	8/30	115				9								
"	54	"	8/31	"				1								
"	54	"	8/31	"				2								
"	55	"	9/2	"								1				
"	55	"	9/2	"								3				
"	56	"	9/1	"				5½								
"	57	"	9/7	"				2								
"	58	"	9/8	"				4								
"	59	"	9/11	"				3								
"	60	"						Clockcards								
"	61	G. Allen	8/25	116				1								
"	62	"	8/28	"								4				
"	63	"						Clockcards								
"	64	"	8/30	"								4½				
"	65	"	8/31	"								6				
"	66	"	9/1	"				2								
"	67	"	9/4	"								9				
"	68	"	9/6	"								5				
"	69	"	9/7	"								2½				
"	70	"	9/8	"				2½				1				
"	70	"	9/8	"				1¾								
"	71	"	9/10	"				4½				2				
"	71	"	9/10	"				1				½				
"	72	"	9/11	"				2½				2				
Med forward				2755½	1583½	980½	656	139¼				69½			63½	51¾

Sheet No. 37

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Br	Brought forward			2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	139 $\frac{1}{4}$				69 $\frac{1}{2}$			63 $\frac{1}{2}$
All	Allen	74	G. Allen	9/12	116			3)							
	"	74	"	9/12	"			3)			Sunday				
	"	75	"	9/12	"			2)				1)			
	"	75	"	9/14	"			2)				1)			
	"	75	"	9/14	"			1				$\frac{1}{2}$			
	"	75	"	9/14	"			1 $\frac{1}{2}$				1			
	"	75	"	9/14	"			$\frac{1}{2}$				$\frac{1}{2}$			
	"	75	"	9/14	"			$\frac{1}{2}$				$\frac{1}{2}$			
	"	76	"	9/15	"			$\frac{1}{2}$				$\frac{1}{2}$			
	"	76	"	9/15	"			2				1			
	"	77	"	9/16	"			2 $\frac{1}{2}$				2			
	"	78	"	9/17	"			1 $\frac{1}{2}$				$\frac{1}{2}$			
	"	78	"	9/17	"			$\frac{3}{4}$				$\frac{1}{4}$			
	"	79	"	9/18	"			2 $\frac{1}{2}$							
	"	79	"	9/18	"			5							
	"	80	"	9/19	"			1			Sunday				
	"	80	"	9/19	"			9			"				
	"	80	"	9/19	"			3			"				
	"	81	"	9/20	"			1							
	Carried forward							181 $\frac{1}{2}$				77 $\frac{3}{4}$			63



No. 38

Exhibit number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by													
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman	
at forward				2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$				77 $\frac{3}{4}$				63 $\frac{1}{2}$	51 $\frac{3}{4}$
Doig 1	Dave Doig	9/15	301						5								
1	"	9/15	"						4 $\frac{1}{2}$								
1	"	9/14	"						17 $\frac{1}{2}$								
1	"	9/12	"						26	Sunday							
1	"	8/25	"						4								
1	"	8/26	"						9 $\frac{3}{4}$								
1	"	8/27	"						9								
1	"	8/28	"						15 $\frac{1}{4}$								
1	"	8/29	"						28	Sunday							
1	"	9/15	"						5								
1	"	"	"						2								
1	"	9/16	"						3								
1	"	9/17	"						3								
1	"	"	"						2								
1	"	9/19	"						10	Sunday							
1	"	9/20	"						3								
1	"	9/20	"						3								
1	"	8/30	"						17 $\frac{1}{2}$								
1	"	8/31	"						5								
1	"	9/2	"						8								
1	"	9/3	"						4								
1	"	9/3	"						3								
1	"	9/4	"						13								
1	"	9/7	"						16								
1	"	9/8	"						6								
1	"	9/8	"						4								
1	"	9/9	"						24	Holiday							
1	"	9/10	"						16								
1	"	9/11	"						17 $\frac{1}{2}$								
at forward				2755 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284			77 $\frac{3}{4}$				63 $\frac{1}{2}$	51 $\frac{3}{4}$

Sheet No. 39

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Br  Al	Brought forward			2755½	1583½	980½	656	181½	284			77¾			63½
	Ed Smith 1	Ed Smith	9/4	393	1½										
	" 1	"	8/27	"	9										
	" 1	"	8/28	"	9										
	" 1	"	8/30	"	9										
	" 1	"	8/31	"	9										
	" 1	"	9/1	"	4½										
	" 1	"	9/3	"	4½										
	" 1	"	9/7	"	1½										
	" 1	"	9/7	"	2½										
	" 1	"	9/10	"	1½										
	" 1	"	9/11	"	4										
	" 1	"	9/12	"	16				Holiday						
	" 1	"	9/14	"	2½										
	" 1	"	9/15	"	7										
	" 1	"	9/16	"	1										
	" 1	"	"	"	1										
" 1	"	9/18	"	3½											
Carried forward				2842½	1583½	980½	656	181½	284			77¾			63½

t No. 40

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by													
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman	
ight forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284			77 $\frac{3}{4}$			3	63 $\frac{1}{2}$	51 $\frac{3}{4}$
ner	1 Gardner	8/30	112												3		
"	2 "	9/7	"												3		
"	3 "	9/8	"												3		
"	4 "	9/10	"												3		
"	5 "	9/11	"												4		
"	6 "		"														
"	7 "	9/12	"							Clockcard Sunday					19		
"	8 "	9/13	"												4		
"	8 "	9/13	"												1		
"	8 "	9/13	"												3 $\frac{3}{4}$		
"	9 "	9/14	"												2		
"	10 "	9/15	"												2		
"	11 "	9/16	"												3		
"	11 "	9/16	"												3		
"	12 "	9/18	"												2		
"	13 "	9/20	"												3		
"	14 "	9/23	"												3		
and	1 S. Hayland	8/30	221								3						
"	2 "	9/7	"								3						
"	3 "	9/8	"								3						
"	4 "	9/10	"								3						
"	5 "	9/11	"								4						
"	6 "		"														
"	7 "	9/12	"							Sunday	19						
"	8 "	9/13	"								4						
"	8 "	9/13	"								1						
"	8 "	9/13	"								3 $\frac{3}{4}$						
"	9 "	9/14	"								2						
ied forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284		45 $\frac{3}{4}$		77 $\frac{3}{4}$		61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{3}{4}$

Sheet No. 41

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by											
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator
Brought forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	45 $\frac{3}{4}$	77 $\frac{3}{4}$		61 $\frac{3}{4}$	63 $\frac{1}{2}$	5
Montgomery 2	P Montgomery	9/12	204					Sunday		2					
"	"	9/12	"					"		4					
"	"	9/13	"							2					
"	"	9/14	"							1 $\frac{1}{2}$					
"	"	9/15	"							2					
"	"	9/16	"							1					
"	"	9/17	"							1 $\frac{1}{2}$					
"	"	9/17	"							1					
"	"	9/18	"							3					
"	"	9/18	"							2					
"	"	9/20	"							4					
"	"	9/21	"							1					
"	"	9/21	"							3					
"	"	9/23	"												
"	"	"	"					Clockcard							
"	"	8/28	"							1					
"	"	8/28	"												
"	"	"	"					Clockcard							
"	"	9/4	"							1					
"	"	9/7	"							1 $\frac{1}{2}$					
"	"	9/7	"							2					
"	"	9/8	"							1 $\frac{1}{2}$					
"	"	9/8	"							1					
"	"	9/10	"							$\frac{1}{2}$					
"	"	9/10	"							$\frac{1}{2}$					
"	"	9/10	"							3					
"	"	9/10	"							1 $\frac{1}{2}$					
"	"	9/11	"							1					
"	"	9/11	"							1 $\frac{1}{2}$					
Carried forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	89 $\frac{3}{4}$	77 $\frac{3}{4}$		61 $\frac{3}{4}$	63 $\frac{1}{2}$	5



No. 3

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by																	
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman					
Right forward				284	2 $\frac{1}{2}$	158	3 $\frac{1}{2}$	98	0 $\frac{1}{2}$	65	6	18	1 $\frac{1}{2}$	28	8	9 $\frac{3}{4}$	77 $\frac{3}{4}$		61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{3}{4}$
Land 10	S. Hayland	9/15	221																		
" 11	"	9/16	"																		
" 11	"	9/16	"																		
" 12	"	9/18	"																		
" 13	"	9/20	"																		
" 14	"	9/23	"																		
er 1	Carter	8/28	216																		
" 2	"	"	"																		
" 3	"	9/2	"																		
" 4	"	9/4	"																		
" 5	"	9/7	"																		
" 5	"	9/7	"																		
" 6	"	9/8	"																		
" 6	"	9/8	"																		
" 7	"	9/10	"																		
" 7	"	9/10	"																		
" 7	"	9/10	"																		
" 8	"	9/11	"																		
" 8	"	9/11	"																		
" 9	"	"	"																		
" 10	"	9/12	"																		
" 11	"	9/13	"																		
" 12	"	9/14	"																		
" 13	"	9/15	"																		
" 14	"	9/16	"																		
" 15	"	9/17	"																		
" 16	"	9/18	"																		
" 16	"	9/18	"																		
ied forward				284	2 $\frac{1}{2}$	158	3 $\frac{1}{2}$	98	0 $\frac{1}{2}$	65	6	18	1 $\frac{1}{2}$	28	105 $\frac{3}{4}$	77 $\frac{3}{4}$	35 $\frac{1}{2}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{3}{4}$	/—

Sheet No. 4

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by													
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman	
1	Brought forward			284 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	105 $\frac{3}{4}$		77 $\frac{3}{4}$	35 $\frac{1}{2}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51	
	Carter 17	S. Carter	9/20	216									2				
	" 18	"	9/21	"									4				
	" 18	"	9/21	"									1				
	" 19	"	9/23	"									3				
	F. Paoli 1	F. Paoli	9/2	176						1							
	Bush 1	J. Bush	9/4	181						2							
	" 3	"	9/17	"						3							
	Ed. Corcoran 30	P. Larkin	8/28	209						2							
	" 30	"	8/28	"						1							
	" 30	"	9/13	"						1 $\frac{1}{2}$							
	" 30	"	9/13	"						1							
	" 30	"	9/13	"						$\frac{3}{4}$							
	" 30	"	9/14	"						1							
	" 30	"	9/14	"						$\frac{1}{2}$							
	" 30	"	9/15	"						1							
	" 30	"	9/16	"						$\frac{1}{2}$							
	" 30	"	9/16	"						$\frac{1}{2}$							
	" 30	"	9/17	"						1							
	" 30	"	9/17	"						2							
	" 30	"	9/18	"						1							
	" 30	"	9/18	"						$\frac{1}{2}$							
	" 30	"	"	"						1							
	" 30	"	"	"						1 $\frac{1}{2}$							
	" 30	"	"	"						$\frac{1}{2}$							
	" 30	"	"	"						$\frac{1}{2}$							
	" 30	"	9/20	"						1							
	" 30	"	9/20	"						3							
	" 30	"	9/20	"						$\frac{1}{2}$							
	" 30	"	9/20	"						1 $\frac{1}{2}$							
-	Carried forward				284 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	136 $\frac{1}{2}$		77 $\frac{3}{4}$	45 $\frac{1}{2}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51

let 5

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by																							
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman											
right forward				284	2 $\frac{1}{2}$	158	3 $\frac{1}{2}$	98	0 $\frac{1}{2}$	65	6	18	1 $\frac{1}{2}$	28	4	13	6 $\frac{1}{2}$	77	3 $\frac{3}{4}$	45	1 $\frac{1}{2}$	61	3 $\frac{3}{4}$	63	1 $\frac{1}{2}$	51	3 $\frac{3}{4}$
Corcoran 30	P. Larkin	9/21	209																								
" 30	"	9/21	"																								
" 30	"	9/21	"																								
" 30	"	9/22	"																								
" 30	"	9/21	"																								
" 30	"	9/22	"																								
" 30	"	9/22	"																								
" 30	"	9/23	"																								
Mockel 1	H. Mockel	8/30	199																								
" 2	"	9/7	"																								
" 3	"	9/8	"																								
" 4	"	9/19	"																								
" 5	"	9/15	"																								
" 6	"	9/11	"																								
" 7	"	9/12	"																								
" 8	"	9/13	"																								
" 8	"	9/13	"																								
" 8	"	9/13	"																								
" 8	"	9/13	"																								
" 9	"	9/14	"																								
" 10	"	9/16	"																								
" 10	"	9/16	"																								
" 11	"	9/18	"																								
" 12	"	9/21	"																								
" 13	"	9/23	"																								
ed forward				284	2 $\frac{1}{2}$	158	3 $\frac{1}{2}$	98	0 $\frac{1}{2}$	65	6	18	1 $\frac{1}{2}$	28	4	13	6 $\frac{1}{2}$	77	3 $\frac{3}{4}$	45	1 $\frac{1}{2}$	61	3 $\frac{3}{4}$	63	1 $\frac{1}{2}$	51	3 $\frac{3}{4}$

Sheet No. 6

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draft
1 Brought forward				284	1583	980	656	181	284	214		77	45	61	63	51
Corcoran	1 E. Corcoran	8/28	111	284	1583	980	656	181	284	214		77	45	61	63	51
"	1 "	8/28	"										2			
"	3 "	9/13	"										1			
"	3 "	9/13	"										1			
"	3 "	9/13	"										1			
"	2 "												1			
"	4 "	9/14	"										1			
"	4 "	9/14	"										1			
"	5 "	9/15	"										1			
"	6 "	9/16	"										1			
"	6 "	9/16	"										1			
"	7 "	9/17	"										1			
"	7 "	9/17	"										2			
"	8 "	9/18	"										1			
"	8 "	9/18	"										1			
"	8 "	9/18	"										1			
"	8 "	9/18	"										1			
"	"	"	"										1			
"	"	"	"										1			
"	9 "	9/20	"										1			
"	9 "	9/20	"										3			
"	9 "	9/20	"										1			
"	9 "	9/20	"										1			
"	10 "	9/21	"										3			
"	10 "	9/21	"										1			
"	11 "	9/21	"										1			
"	11 "	9/21	"										2			
"	11 "	9/21	"										3			
"	11 "	9/21	"										1			
Carried forward				284	1583	980	656	181	284	214		77	81	61	63	51



et 7

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Right forward				284 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	214		77 $\frac{3}{4}$	81 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
Coran 12	E. Corcoran	9/22	111										$\frac{1}{2}$			
" 12	"	9/22	"										1 $\frac{1}{2}$			
" 13	"	9/23	"										3			
" 14	"							Clockcard								
"	"							"								
" 15	Brindle C.	9/11	113										2			
" 16	"	9/2	"										2			
" 17	"	9/1	"										3			
" 18	"	8/31	"										1			
" 18	"	8/31	"										3			
" 19	"	8/30	"										3			
" 20	"	9/23	"										1			
" 21	"	9/21	"										2			
" 21	"	9/21	"										1			
" 21	"	9/21	"										1			
" 22	"	9/20	"										2			
" 22	"	9/20	"										$\frac{1}{2}$			
" 23	"	9/18	"										1			
" 23	"	9/18	"										1			
" 24	"	9/17	"										6			
" 25	"	9/15	"										4			
" 26	"	9/14	"										5			
" 26	"	9/14	"										$\frac{1}{2}$			
" 27	"	9/13	"										3			
" 27	"	9/13											2			
rson 1	R. Nickerson	9/12	110					Sunday			4					
" 2	"	9/24	"								2					
" 3	"	9/11	"								1					
omery 1	P. Montgomery	9/2	204							$\frac{1}{2}$						
and forward				284 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	214 $\frac{1}{2}$	7	77 $\frac{3}{4}$	130 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$

Sheet No. 8

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
Brought forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	656	181 $\frac{1}{2}$	284	214 $\frac{1}{2}$	7	77 $\frac{3}{4}$	130 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51
Vaccarezza, C	1 Do-	9/24	1				3									
Hayland	1 Hayland	9/2	207										2			
"	1 "	9/1	"										2			
"	1 "	8/31	"										2			
"	1 "	8/30	"										4			
"	1 "	8/28	"										3			
"	1 "	9/4	"										$\frac{1}{2}$			
"	1 "	9/4	"										1 $\frac{1}{2}$			
"	1 "	9/7	"										3			
"	1 "	9/7	"										2			
"	1 "	9/8	"										1			
"	1 "	9/8	"										2			
"	1 "	9/10	"										3			
"	1 "	9/10	"										1			
"	1 "	9/10	"										1 $\frac{1}{2}$			
"	1 "	9/11	"										$\frac{1}{2}$			
"	1 "	9/11	"										1			
"	1 "	9/11	"										3			
"	1 "	9/11	"										1)			
"	1 "	9/11	"										1)			
"	1 "	9/12	"										6			
"	1 "	9/22	"										2			
J. Domminick	1 Domminick	9/9	1				6									
J. Noleroth	1 J. Noleroth	9/20	"				4 $\frac{1}{2}$									
"	1 "	9/14	"				1									
"	1 "	9/14	"				4 $\frac{1}{2}$									
J. Perry	1 J. Perry	9/24	"				2									
"	1 "	9/12	"				4									
"	1 "	9/21	"				....									
"	1 "	9/14	"				....									
Carried forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	214 $\frac{1}{2}$	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51

et No. 9

Exhibit Number	Name of Employee	Date (month and day)	Workman's Shop No.	Number of hours worked by												
				Machinist	Machinist and machine	Large tool and machinist	Helpers	Blacksmith, fire and helper	Foreman	Iron worker	Rolls	Blacksmith with hammer	Punch, shear, counter- sink and planer	Bending slab and furnace	Crane and operator	Draftsman
right forward				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	214 $\frac{1}{2}$	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
Petrocelli	1 Petrocelli	9/14	180							4 $\frac{1}{2}$						
Perry	1 L. Perry	9/10	224							9						
Larson	1 P. Larson	8/30	209							4						
"	1 "	8/31	"							2						
"	1 "	9/1	"							2						
"	1 "	9/2	"							2						
"	1 "	9/4	"							$\frac{1}{2}$						
"	1 "	9/4	"							1 $\frac{1}{2}$						
"	1 "	9/7	"							3						
"	1 "	9/7	"							2						
"	1 "	9/8	"							1						
"	1 "	9/8	"							2						
"	1 "	9/10	"							3						
"	1 "	9/10	"							1						
"	1 "	9/10	"							1 $\frac{1}{2}$						
"	1 "	9/11	"							$\frac{1}{2}$						
"	1 "	9/11	"							1						
"	1 "	9/11	"							3						
"	1 "	9/12	"							1)						
"	1 "	9/12	"							1)						
"	1 "	9/12	"							6						
				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
Minist				2842 $\frac{1}{2}$	1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
st. & Mach.					1583 $\frac{1}{2}$	980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
Tool & Mach.						980 $\frac{1}{2}$	681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
er, plus 262, Page 60 5'							681	181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
mith, Fire & Helper								181 $\frac{1}{2}$	284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
an									284	266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
orker										266	7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
											7	77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
mith, Fire & Helper												77 $\frac{3}{4}$	173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
ur, Shear & Csk.													173 $\frac{3}{4}$	61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
ng Slab														61 $\frac{3}{4}$	63 $\frac{1}{2}$	51 $\frac{1}{2}$
& Operator															63 $\frac{1}{2}$	51 $\frac{1}{2}$
uman																51 $\frac{1}{2}$

Power Schedule

furnished Ship

Night Engineer

514		Power Hours and Straight & Overtime Allowed			
					Hours
8/24	W. Ferro	14½	"	11½	"
8/25	" "	15	"	6	"
8/26	" "	9	"		
		3	"	3	"
8/27	" "	7½	"	7½	"
8/28	" "	15	"	6	"
8/29	" "	14½	"	14½	"
8/30	" "	15	"	6	"
8/31	" "	7½	"	7½	"
9/1	" "	1½	"		
9/1	" "	6	"	6	"
9/2	" "	15	"	6	"
9/3	" "	4½	"		
"	" "	3	"	3	"
9/5	" "	18½	"	18½	"
9/6	" "	15	"	15	"
9/7	" "	15	"	6	"
9/8	" "	15	"	6	"
9/9	" "	15	"	15	"
9/10	" "	15	"	6	"
9/11	" "	15	"	6	"
9/12	" "	15	"	15	"
9/13	" "	15	"	6	"
9/14	" "	15	"	6	"
9/15	" "	15	"	6	"
9/16	" "	15	"	6	"
9/17	" "	15	"	6	"
9/18	" "	15	"	6	"
9/19	" "	15	"	15	"
Forwarded		359½ Hours		215½ Hours	



## Power Schedule

				Power Hours	and	Overtime Allowed		
Forward				359½	Hours		215½	Hours
Night Engineer								
9/20	514	W. Ferro		15	"		6	"
9/21	"	"	"	15	"		6	"
Day Engineer								
8/29	300	Chas. Linde		10	"		5	" Sunday
9/4	"	"	"	13	"		6½	" Night man absent
9/5	"	"	"	6	"		3	" Holiday
9/6	"	"	"	10	"		5	" "
9/9	"	"	"	10	"		5	" "
9/12	"	"	"	10	"		5	" Sunday
9/19	"	"	"	10	"		5	" "
On card of 9/19				23	"			

Steam furnished to steam out  
tanks previous to this date.

Total power time for power  
furnished ship nights 481½ Hours

## Sundays and Holidays

Overtime paid to Engineers on }  
nights, Sundays and Holidays } 262 Hours  
charged as helpers on shop time }

Sheet No. 1

## PUTZAR'S TIME SHEETS

Sheet No.	Machinists and Electricians	Riggers and Helpers	Foremen	Air Tools and Operator	Machinists and Air Tool	Carpenters	Steam-fitters'	Steam-fitters Helpers	Iron Workers	Scalers and Laborers
Sheet 1	47	39								
" 2	145	114					26	12	40	
" 3	64	74	20							
" 4	132	182	10				8	10		
" 5	80	80	20							
" 6	165	239		15		1 da.	19	15		
" 7	84	70	16							
" 8									15	50
" 9	176	264	26	24			10	5	41	190
" 10	96	96	18							
" 11	221	196	10	44		$\frac{1}{2}$ da.	10	5	52	180
" 12	96	96	18							
" 13	348	338	20							
" 14	100	48								
" 15	164	216	12	40			3	6	21	
" 16			10	28					32	150
" 17	96	96	18							
" 18	153	198	10				8			
" 19			7	20					100	200
" 20	96	96	18							
" 21	130	245	18				3			
" 22			6	20					102	260
" 23	96	96	18							
" 24	129	226	10	7			12			
" 25			6	23					95	230
" 26	96	96	18							
" 27			8	60					158	230
" 28	131	316	10							
" 29	96	96	18							
Forward	2941	3717	345	19) 262)		1 $\frac{1}{2}$ da.	99	53	656	1490

et 2

Sheet No.	Machinists and Electricians	Riggers and Helpers	Foremen	Air Tools and Operator	Machinists and Air Tool	Carpenters	Steam-fitters'	Steam-fitters Helpers	Iron Workers	Scalers and Laborers
Forward	2941	3517	345	19) 262)		1½ da.	99	53	656	1490
et 30	128	278	10							
31	96	96	18							
32			9	80					100	210
33	228	300								
34	130	156	28						80	
35			10							
36	282	292	20							
37	130	156	28							
38	205	216	10	3					43	
39	80	96	18							
40			13	52					221	200
41	258	244	14	3		1 da.			21	
42			15	27					281	
43									64	200
44	80	80	18							
45	424	414								
46	281	284				1 da.			3	
47		139	22							
48			10	40			13	6	164	240
49	96	80	18							
50	255	399	22			1 da.			26	
51	112	96	18							
52	500	594	4	2		3 da.		12	2	
53			25	48				20	220	
54	182	156	28							
55	262	288	20		20				42	
56			25	72			2		287	
57	79	126							5	340
Forward	6749	8007	748	19) 589)	20	7½ da.	114	91	2215	2680

Sheet No. 3

Sheet No.	Machinists and Electricians	Riggers and Helpers	Foremen	Air Tools and Operator	Machinists and Air Tool	Carpenters	Steam-fitters'	Steam-fitters Helpers	Iron Workers	Scalers and Laborers
Brot. Forward	6749	8007	748	19) 589)	20	7½ da.	114	91	2215	2680
Sheet 58	112	96	18							
" 59	204	387	20	14	26		5	5	28	
" 60	31	28	8	40					23	
" 61			6	15					216	
" 62	112	80	18							
" 63			8	45			2	2	188	200
" 64	305	257			17		10	5		
" 65	34	26	4	23			6	3	8	377
" 66			8	23					180	
" 66½	112	96	18							
" 67	132	164	20				23	14		200
" 68	114	12	7	76			3		131	
" 69	128	96	8							
" 70	126	186	20	50					33	
" 71	162	110	18	10					76	
" 72	56	28		12			22	10	96	
" 73	130	186	12							
" 74			9	12					194	
" 75	155	36	26	34			15	6	53	
" 76	218	153								
" 77	238	84		20					20	
" 78	182	52	36						105	
" 79	90	56	10	5					59	
" 80	197	47					67	40	9	
" 81	80	16								
" 82	88	14	11	34					275	
" 83	255	144					34		20	
" 84			34				22	22	290	
Forward	10010	10361	1067	1021	63	7½ da.	323	198	4219	3457



No. 4

Sheet No.	Machinists and Electricians	Riggers and Helpers	Foremen	Air Tools and Operator	Machinists and Air Tool	Carpenters	Steam-fitters'	Steam-fitters Helpers	Iron Workers	Scalers and Laborers
Forward	10010	10361	1067	1021	63	7½	323	198	4219	3457
et 85	190	89	20				26	16	40	
86	116	39	10						76	
87									40	
inists & Electricians	10316 hrs									
iggers & Helpers	10489 hrs									
	Foremen	1097 hrs								
	Air Tool & Operator		1021 hrs							
		Machinist & Air Tool		63 hrs						
			Shipwrights		7½ da.					
				Steamfitters		349 hrs				
				Steamfitters' Helpers			214 hrs			
						Ironworker			4375 hrs	
							Scalers & Laborers			3457 hrs

**Summary of Pattern Makers' Material, Pattern Makers'  
Time and Pattern Makers' Metal.**

---

**FRANCIS DOLAN—PATTERN MAKER.**

The first charge which we will consider is that at the end of page 3 of Schedule 1, which is as follows:

Pattern work .....\$324.10

The proof of this charge is found in Dolan's Exhibits, libelant's Exhibit 1, and the time cards found on the Shannon file marked "Francis Dolan's Exhibits 3, 4, 5 and 6". Libelant's Exhibit 1 shows the following lumber used for pattern work on this vessel:

Card letter and number

D 9040	25 feet
D 9041	108 "
D 9042	15 "
D 9045	15 "
D 9048	50 "
D 9053	30 "
D 9055	100 "
D 9058	25 "
D 9065	90 "
D 9066	50 "
D 9069	15 "
D 9070	25 "
D 9077	40 "

---

Making a total of 592 feet

This is charged for at the rate of 6¢ per foot, which is testified to by Curtis, page 1472, as being the usual charge for such lumber.

592 feet at 6¢ per foot      \$35.52

The pattern makers' time is proven by Francis Dolan's Exhibits 3, 4, 5 and 6 and are as follows:

	date	shop no.	time-hrs.
Robert Shepard	8/30	392	2
“	9/3	“	4½
“	9/4	“	½
“	9/5	“	6
Francis Dolan	8/26	390	2½
“	8/27	“	8
“	8/28	“	5½
“	8/30	“	6½
“	8/31	“	4
“	9/1	“	3½
“	9/2	“	3
“	9/4	“	4½
“	9/6	“	1
“	9/8	“	2
“	9/10	“	2½
“	9/11	“	9
“	9/12	“	16
“	9/13	“	5
L. Reichhold	8/27	397	9
“	8/28	“	9
“	8/30	“	9
“	8/31	“	9
“	9/1	“	7

L. Reichhold	date	shop no.	time-hrs.
"	9/2	"	8
"	9/3	"	9
"	9/4	"	9
"	9/8	"	2½
"	9/10	"	9
"	9/11	"	5½
"	9/14	"	4
"	9/15	"	9
"	9/16	"	4
"	9/17	"	9
"	9/18	"	9
Francis Dolan	9/14	390	4½
"	9/15	"	4½
"	9/16	"	4½
"	9/17	"	4
"	9/18	"	7
"	9/20	"	1
E. L. Clifford	9/14	400	4½
"	9/16	"	5
"	9/17	"	9

---

Making a total of.....251 hours  
 charged for at the rate of \$1.15 per hour as testified to  
 by Mr. Curtis on page 1472, which testimony is undis-  
 puted.

This makes a total charge for pattern workers'

time of .....\$288.65  
 to which add the cost of redwood lumber as  
 above ..... 35.52

---

Making a grand total of.....\$324.17



The pattern makers casting materials is proven by libelant's Exhibit #2 which is the succession of white sheets, the detail of which is as follows:

Tag No.	Cast Iron	Cast Brass	Cast Bronze	Manganese Bronze
6235	1305		141	
6238		211½		
6240			161	
6256	69	141½		
6261	16			
6266		211½		
6271		67		
6272		51½		
6273		321½		
6274	105			
6276	530			
6280		251½		
6286	403			
6287	105	82	332	
6289		81½		
6290		41½		
6299	178	41½		
6294		251½		
6251				897
6257		2721½		
6298	15	5		
6301	215	93		
6303				
6304		311½		
6305		951½		

Tag No.	Cast Iron	Cast Brass	Cast Bronze	Manganese Bronze
6310		130		
6321	64			
6291			44	
6317	63			
Totals	3068			
Cast Iron	3068#			
	Cast Brass	940½#		
		Cast Bronze	678#	
			Manganese Patch	897#

On the foregoing metal sheets the cast iron is indicated by the letters "C. I." Cast brass is either written out in full or indicated by the abbreviations "brs." or "M. B.", meaning machine brass. Cast bronze is indicated by either being written out or the abbreviation "B. R." Manganese bronze is written out.

These abbreviations and the nature of the material on each of the cards is indicated in the testimony of Dolan, pages 20, 21 and 22.

## APPENDIX II.

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### Miscellaneous Objections Appearing in the Brief (pages 118-122 and 127-132).

These objections are, with very few exceptions, unfounded. Many of them are simply an error in placing time in the column provided on the time sheet for straight time, instead of the column provided for overtime. The third column, however, which carries the total, is not affected thereby; the totals being the same in each instance as if the time mentioned had been in the overtime column. The total column is the one from which the bill is made up. So these slight errors have not in anywise affected the charge against Matson.

We will now take them up seriatim:

#### Reply to Appellant's Brief (pages 118 to 122).

(2) "*Sept. 14—W. Ross, Electrician, 12 hours charged against respondent.*"

This charge is cited to show that Putzar copied from the time card and nothing more. If that were true, he would have copied it correctly for the time card showed *seven* hours straight time and *four* hours overtime, or 15 hours in all. It is morally certain that the man himself would have seen to it that the total number of hours for which he was paid was correctly entered upon his card and hence his card must have shown 15 hours. If therefore this entry on Putzar's

sheets is any evidence upon the point to which it is cited, it is evidence that Putzar *did not copy the card*. The same observation applied to the next criticism on page 119. It will also be noted that both of these charges are *in favor of the respondent*.

No. (3) (page 119). Siverson 10 hours straight time and four hours overtime on rudder, and 9 hours straight time on valves. This is a simple error. The 9 hours last mentioned were put in the wrong column. The 9-hour entry on valves should have been in the total column.

No. (4) For this matter, appellant was allowed a reduction from the bill, but he does not appear to be satisfied with it. He thinks that it should have been sufficient to have caused the Court to entirely disregard Putzar's time sheets. If that were to be the course of reasoning, then no system of accounts could have been introduced in evidence, because all systems are subject to ordinary human error, and this is not an extraordinary mistake.

No. (5) As to Nelson working at night 14 hours overtime (sheet 78), and 10 hours straight time, and 4 hours overtime (on sheet 80): The conclusion drawn by appellant is wrong that this was "all performed in one night". Nelson worked 10 hours straight time at night, which is  $8\frac{1}{2}$  hours actually worked. He then remained at work during the day, which for him was overtime. He continued on the job for 18 hours longer, in other words, worked for  $26\frac{1}{2}$  consecutive hours. His overtime would be *day work* and night



work consecutively following, viz.: all the time of the succeeding day and night following his first 8½ hours straight time.

No (6) September 21st, P. McUrney. The explanation is, the man worked 10 hours on the 21st during the day, and worked for 13 hours that night, making a total of 23 hours. The mistake is made in entering the 10 hours in the first column or "straight" column, instead of "overtime" column. As respondent is only charged for what appears in the total column, and as the total is the same as if it had been entered under the right column, it makes no difference in the bill.

"J. Finson, No. 190, is allowed 4 hours straight time for work on floors (sheet 82) and 8 hours straight time for work on tank top and 10 hours straight time for work on try cocks (sheet 82). This gives an allowance to this man of 22 hours of straight work in one day."

The explanation is as follows: This man worked 10 hours straight time on that day and 6 hours overtime, which allowed him 12 hours overtime, and 10 hours straight time, or a total of 22 hours. The mistake is made in the entry of the overtime in the straight time column. Again, the total is constant.

William Eade, No. 212. The explanation to this is, that the man worked 10 hours straight time and 2 hours overtime, allowing him a total of 14 hours. The error is made in entering the 14 hours as straight time in the first column. Same as before.

“On August 28th, F. Paoli, No. 176, is allowed 18 hours straight time (sheet No. 11).”

The explanation of this is: This workman worked 10 hours straight time and 4 hours overtime, for which he was allowed 18 hours. The error is made in entering the 18 hours in the straight time column. Total is not affected.

“September 14th, William Schmidt, No. 318, is allowed 42 hours of time, composed of 10 hours straight time, and 16 hours overtime, reckoning  $8\frac{1}{2}$  hours of actual working straight time and adding to this 16 hours of overtime, gives him  $24\frac{1}{2}$  hours of actual work in one day (sheet 59).”

The explanation for this is that he worked a day of  $8\frac{1}{2}$  hours for which he was allowed 10 hours, and worked all night for 16 hours, for which he was allowed 32 hours. These added together make 42 hours. Appellant makes the mistake of not doubling the overtime.

“On the same day, workmen Nos. 355, 517 and 536 are allowed 10 hours straight time, and 15 hours overtime, making a total of  $23\frac{1}{2}$  hours of actual work (sheet 59).”

The explanation for this is, the workmen worked  $8\frac{1}{2}$  hours for the day, for which he received 10 hours, he worked all night a total of 15 hours for which he received 30 hours. There is nothing “incredible” about it. There are times when men have worked as much as 48 hours actual time (pages 1572-3).

Nos. 330, 515, 269 (sheet 64);

September 20th, 364 (sheets 74 and 80);

September 13th, 515, 564, 355 (sheet 55), worked in a similar manner.

“On Sunday, September 12th, C. Schmidt, No. 355 (sheet 52), is allowed 34 hours double time, which represents 17 hours of actual work, and, as will be seen from the above, this man worked 23½ hours September 13th and 23½ hours on September 14th.”

This work was performed while the ship was on the drydock having her rudder repaired and the tail shaft drawn, propeller removed and replaced. This was the boss rigger. He did work continuously, and nothing unusual.

“On September 20th (sheet 80), Henry Nelson, foreman, is allowed 10 hours of straight time, and 4 hours overtime, and on the same day at night, and is allowed 14 hours overtime, the total of 26½ hours of work in one day.”

The explanation is, that Nelson worked the day, and was allowed 10 hours straight time that night, and the next day 18 hours. Being night foreman, his day work is overtime.

“On September 20th, No. 516 is allowed 5 hours straight time, on job No. 5398, and 9 hours straight time on job 5295 (sheets 79 and 80).”

The explanation for this is, that this workman worked 10 hours for the day and 2 hours overtime, and was allowed a total of 14 hours. The error is made in

entering the time in the straight time column, but the total column is right.

“On September 20th, workmen Nos. 375, 570, 505, 567, 568, and 513, are allowed 10 hours straight time and 3 hours overtime (sheet 81) and in the night of the same day each man is allowed 13 hours overtime (sheet No. 78). This makes  $24\frac{1}{2}$  hours of actual work for each man.”

That is nothing unusual. The explanation for this is as follows: The men worked the day of  $8\frac{1}{2}$  hours of which they were allowed 10 hours, and worked 16 hours that night into the following day.

No. (7).

“On August 28th, workmen whose numbers are 105, 176, 181, 186 and 188 are allowed 50 hours of straight time for work on ladders (sheet No. 11).”

“On September 2nd, two workmen Nos. 105 and 109 allowed 8 hours of straight time on ladders (sheet No. 25).”

“On September 21st, workmen whose numbers are 189, 190, 203 and 205, are allowed 34 hours straight time and 14 hours overtime on work on floors (sheet 82).”

“On September 23rd, workman No. 109 is allowed 10 hours straight time on floor plates (sheet 85)”

“On September 24th, workmen whose numbers are 106, 184, 181, 127, 114, 186, 109 and 189, are allowed 40 hours of straight time for work on floors.

All of the above are improperly charged to the respondent, for the work is covered by a separate contract. (See Schedule 5 of the Libel, vol. I, page 37.)”

These changes are correct. It is not part of the contract, as we shall presently show.



The answer to all of the above testimony is as follows: the testimony shows it was extra work. "Klitgard" (page 2695), gives under head of "Work performed but not contracted for",

"Subd. 7. Floor plates and supports at back of engine reconstructed and renewed."

"Subd. 8. Floor plates over shaft raised and new angle bar supports fitted."

Also, Taylor, Vol. III, page 1085.

"Mr. Putzar, in charge of engine room after that work proceeded he might tear it all to pieces.

Q. Are you stating a hypothetical state of facts or facts?

A. Facts." (Page 1098, Vol. III.)

"The engine room platform throughout was reconstructed. It was lowered from its original position and a continuous platform made from the ice machine room over to the storeroom; the hand rails around the engine were also all remodeled, and the different openings in the gratings were made different from the original. Some new pieces of gratings, of course, had to be made, and new hand rails, as well." (Siverson, pages 1098-99.)

"No. (8). Francis Dolan, foreman pattern maker, worked at the shop on August 27th, 28, and 31st; Sept. 1, 11, 12, 13, 14, 16, 17, and 18th. He kept his own time, while there, and the time of the men working with him in his department. His cards and the cards of these men were turned in as shop cards, and have been introduced in evidence as such."

The explanation of this is as follows: Mr. Dolan's men are pattern makers, and in making their patterns, it was necessary to go aboard the ship *at short inter-*

vals, to fit the template. The major portion of their work was in the shop, making the patterns, and for that reason they have always been considered "shop men" and their record kept solely in the shop (Vol. I, pages 176-7).

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### Reply to Appellant's Brief (pages 127 to 132).

1. "*On Schedule No. 1 is a charge of 1145 lbs. of checkered floor plate, this is a part of the contract No. 4.*" It is not contract. See report of Klitgard VII, page 2695, subd. 7, under heading "Not contracted for", "floor plates and supports back of engine reconstructed and renewed" subd. 8, "floor plates over shaft raised and new angle bar supports fitted."

Siverson, page 1098, Vol. III, quoted ante.

Taylor's testimony, Vol. III, page 1085, also quoted ante.

"*Hilonian's reverse shaft was never in the shop.*"

The following shows that work was done on it in the shop:

Klitgard, page 2690, VII, Subd. 22:

"To throttle, passover, *reversing* and drain rods overhauled, holes being bored out, new pins supplied and all satisfactorily refitted."

Testimony of Gray, page 2383, Vol. VII:

"Q. Mr. Gray, do you know whether or not any part of the reversing shaft was taken to the shop to work on? Mr. Klitgard was asked, 'Q. Do you know whether or not the Hilonian's

reverse shaft was ever in the shop of the United Engineering Works?'

A. Well, it was not, never was in the shop.

Q. He says it was not. Was any part of it in the shop? A. They made a clamp for it."

*New valves for feed pump.*

Answer in VII, page 2692, Subd. 45:

"New bonnet plate with yoke, extension handle, stem, fitted with universal joint attachment, supplied and fitted for main injection valve."

Also Subd. 42:

"Engine room tank manifold removed to shop, bored out new brass sheets and valve disks cast and fitted."

*Hilonian bed plates were not in the shop of the United.*

We made a bronze patch in the shop that was fitted to the bed plates in place of the column. This is not disputed.

*Cylinder liner work.*

This could apply to the bronze liners for the eccentric straps or the fitting of the lagging on the reverse cylinder.

*Cover for slide valve.*

Testimony of H. B. Gray, Vol. VII, page 2390:

"A. Yes, there was work done on it.

Q. What was it? A. The rearrangement of the spring that holds the valve up to the seat spring and block?

Q. What was done?

A. Well, the block was worn out, not sufficient tension on the spring to hold the block up to the seat, to hold the valve in turn against the seat of it, and the spring was taken to the shop and a new block was fit on it.

Q. What did that necessitate with regard to the slide valve cover?

A. Well, it had to be planed."

*No taps were ever tempered in the shop.*

"It was the customary charge at that time to charge for all special tools for any vessel, and the people who undertook to have the work performed always paid for it, and in cases where we sent out handtools, the dressing and the repairing of these were charged to the job as was customary, owing to the fact that the tools were in good condition when sent out on the job and when the vessel left the tools were repaired under our own job numbers or cost numbers" (Curtis, 1472).

*On August 27th, (Adamson's exhibit 94), William Schmidt (No. 318), card charges respondent with 6 hours overtime under job No. 5295 on board Hilonian. The card also shows the full straight time was worked for 5253, which is not a Hilonian number.*

The answer to this is as follows:

Adamson's exhibit No. 94, August 27th, is not charged for as shop time (see Appendix I, sheet 20). The straight time worked on 5253 is not a Hilonian number and *not charged to them*. Overtime is always charged on last job worked on after doing straight time. (II, 342-3.)



*On Sheet 9, Mr. Putzar's sheet, the Hilonian is charged with 7 hours straight time on the ship for the same man. This is simply entered in wrong column and should have been overtime. The total column is right.*

*W. B. Thomas, No. 315, worked in the shop August 27th, job 5295 for 9½ hours straight time (Adamson's exhibit No. 55) and on the ship on the same day and on the same job number 10 hours straight time. (Sheet 9.) On August 28th the same man's card, (Adamson's No. 55), shows 10 hours shop work charged to 5295, while Putzar's time sheets credit him with 10 hours ship work on the same job number on the same day, both credits being for straight time.*

*W. B. Thomas, No. 315, is not charged for on the shop time' (see Appendix I, Sheet 15), but is charged for on sheet 9 as 10 hours straight time.*

*On August 28th the same man's card, Adamson's exhibit No. 55, shows 10 hours shop work charged to 5295, while Putzar's time sheets credit him with 10 hours ship work on the same job on the same day, both credits being for straight time. This is correct. He is not charged in the shop time for this man's labor (see Sheet 15, Appendix I).*

*September 15, John Ross, No. 348, is credited with 1½ hours straight time shop work under 5325, Adamson's exhibit No. 69, and on the same day is credited with 10 hours straight time and 2 hours overtime on the ship. This is correct. He is charged on*

Appendix I, Sheet 17, with  $11\frac{1}{2}$  hours and also charged for the time called for on Putzar's sheets.

*On September 16th James B. Gordon is credited with  $8\frac{1}{2}$  hours of straight time and  $1\frac{3}{4}$  hours of overtime shop work for work on pump links under job 5398, Adamson's exhibit No. 82, and on the same day with 5 hours straight time for ship work on the rudder, Putzar's sheet 67.*

The explanation for this is that Mr. Gordon worked  $8\frac{1}{2}$  hours of straight time and  $1\frac{3}{4}$  hours of overtime in the shop and was then called upon to work aboard the ship for 5 hours. The 5 hours is overtime. Mistake in column. Result unaffected.

*On August 28th, F. Paoli. The workman worked 10 hours straight time and 4 hours overtime, making a total of 18 hours including his overtime. Wrong column. Result unaffected.*

*September 8, J. Hurly, foreman, is credited with 10 hours straight time on tank top and 5 hours straight on smoke stack. Putzar Sheet 42. The explanation of that is that the man worked  $8\frac{1}{2}$  hours day work for which he received 10 hours, and  $2\frac{1}{2}$  hours overtime for which he received 5 hours, making a total of 15 hours. Wrong column. Result unaffected.*

*On September 20th Henry Nelson, night foreman, is credited with 10 hours straight time and 4 hours overtime on stuffing box gland and 14 hours overtime on*

*drag link brasses.* This is correct. Mr. Nelson received 10 hours straight for his day's labor and he worked that night into the following morning 18 hours. Putzar's sheet 78, 80.

*Schedules 1, \$720 for running power house at night 480 hours at \$1.50 an hour.*

Appellant offers a criticism of this charge which he says the trial Court said was answered by Ferro's testimony. Appellant says he does not understand this and desires us to explain it. The answer is plain. Appellant assumes that because Putzar's time sheets only show night work on the ship for twenty-four days that therefore the furnishing of the light to the ship for what he calculates to be thirty and 9/10 days is an overcharge. He *ignores the fact that light is furnished to the ship not because it is night time, but because the hold of the ship is dark both night and day* and therefore whenever they worked in the hold whether it be day or night, light must be furnished therefor. After the night shift had gone off a new shift took its place. They also worked six Sundays and holidays. If the Court will consult the summation at the end of Appendix I, it will find the "Power Schedule" which consists of Ferro's time and Linde's time, the day and night engineers. The time is 481½ hours.

*David Doig's Cards.* It is said these are in the record without any proof whatsoever. In making this statement he overlooks the fact that Doig testifies to that personally (pages 1005-6).

It is also pointed out that he was a shop man and allowed ten hours of straight time. This is correct, because he was foreman.

*The card of John Knight:* This man was dead, and Curtis testified that he saw him make out the time, the man was unable to write anything owing to the fact that his arm was in no condition to write.

*The card of Haglund, et al.:* These were proved by proving their handwriting. In answer to respondent's question: "Has counsel the temerity to claim that the hours shown on these cards have been legally proved, etc.?" we answer "Yes, he has that temerity for this man was crazy and the rest out of the jurisdiction."

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### **Respondent's Brief, pages 58 to 70.**

*Brief, pages 58-59.—Comment upon the difference between the original bill and the rechecking made by Curtis after the evidence was in.*

His comment upon this subject does not correctly state the facts according to the evidence. The difference is due to the fact that certain cards which were properly chargeable and included in the bill were not in such shape as to comply with the requirements of technical proof and were therefor not offered in evidence. This naturally made a difference in the totals. See pages 1482-1488.

*The finishing of the bearings (page 59).*

It is said that Gray's explanation that the contract called for rough finishing is contradicted by his bill



which reads "Cast and finished four new bearings for main journals." This is no contradiction for the finish there referred to is the rough finish. After they are cast they must be rough finished and the finer finish is done after the crank shaft is taken out.

Gray, pages 2386, 2450-2451.

This testimony of Mr. Gray is further corroborated by the specification Respondent's Exhibit Christy "C", Subd. 9, (page 2656) which provides for the "truing up of all main bearings in the lathe. File housings where worn and bed to same new shells (these will be supplied by ship). After shells are properly bedded they are to be bored out in place in perfect alignment". This shows that the finishing of the shells, otherwise called bearings, was not understood by Matson to be part of the special contract to make the same.

They were not, however, bored out in place as provided by the specifications, but they were finished in the shop.

Gray, 2386.

Siverson, 1158-9.

If the finishing of these bearings was part of a special contract why was that work placed in these specifications which were submitted to the Union Iron Works and the Risdon without a provision that that particular work was already contracted for and was to be done by the United?

The range of time from August 24th to September 20th is easily accounted for. The vessel was stripped

the 23rd, on the 24th they would try the bearings for their place to ascertain what was necessary to be done on them. The work on them would not be concluded until the engine was being reassembled.

The testimony of Kinsman and Klitgard that the boring out in place was ship work and not shop work is of no value because, as we have already seen it was not done on the ship as contemplated by No. 9 of the specifications, but was done in the shop. Both Kinsman and Klitgard's statement that no work was *required* to be done in the shop *under that specification* is therefor immaterial.

It is pointed out that the work, with but one exception, was done under 5295 and as that was the original specification work, it is asked why was not the finishing given an extra job number. The answer is, the boring out was called for by the specification, subd. 9. In making this contention respondent is guilty of giving a double meaning to the word "extra". It is not contended that it was an "extra" under the previous contract covered by Schedule 8. The specification contract is all *quantum meruit* work.

Regarding cards of Chandler and other men on spring bearing and stock cards charging material for spring bearing and shop work on spring bearings. Respondent asks a number of "Why do we find" under this heading and thinks Curtis will have to explain further.

We are always willing to explain if given a fair chance. Chandler's charge for babbitting is explained

by the testimony of Siverson, page 1091. The babbitting upon these bearings had to be done over again. Siverson said after explaining the manner in which the work was lost:

“A. It was lost inasmuch as they had to be *remetalled*, all the metal was melted out of them.”

This, as we have already explained, was not contract work. This explains the time cards of all the men showing work on spring bearings. It also explains the stock card charge of materials to these spring bearings: Respondent is charged for ship time on spring bearings because the shortening of the shaft made it necessary to move the spring bearings forward and slot holes in the pedestals.

Siverson, 1098.

*Chandler's two numbers on spring bearings 5295, 5325.*

This change has no effect on the *quantum meruit* claim. It is merely raised to call attention to respondent's claim of an error in keeping the job numbers separate. When Chandler's was examined, his attention was not called to this particular card, but his attention was called to another card, Sept. 5th, which is No. 5295 for crank brasses and Sept. 6th 5325 for crank pin brasses and asked to explain why they are separate numbers, says:

“It is too long ago for me to remember that now. No, I cannot explain that now” (pages 1421-1423).

But the change was made on the card of September 6th in *red ink*, showing that it was made in the office when the same was being checked up (pages 1424-1425). This shows unmistakably that it was inquired into at the time and therefor was right. The card of September 22nd shows the same condition. 5295 being corrected in *red ink*, it must have been right at the time or that would not have been done. Instead, therefor, of showing a lax method of doing the business, this instance shows to the contrary that it was carefully checked. Adamson is asked concerning it and while he is not able to remember what caused it, he gives the reason for it that is in perfect accord with the general method of keeping such time (pages 294-295).

*Smoke stack charges No. 5389, and smoke stack work No. 5360, all of which is said to have been done under contract.*

We have answered this claim on "smoke stack", all being done under contract in another part of the brief. So far as the changes in number is concerned it is answered by the same fact, namely, the \$900 work was done under No. 5389, but the other work for which we make *quantum meruit* charges was done under 5360 and consisted of the matters referred to when we considered the criticisms of Putzar's sheets 42, 48 and 72 as being a charge for *quantum meruit* work, which respondent claims was contract.

*Brief, pages 64 and 65.*—This is a claim that the cards under the *quantum meruit* claim were for contract work. This has been taken up and answered on page .



The rest of respondent's criticisms are mere repetitions of former ones that have been answered. By multiplying instances he says it is to be understood "that it is useless to go on, the whole method and plan was wrong and it is hopeless to bring order out of chaos of such proof". To make criticisms is one thing and making just criticisms is still another and by repeating criticisms in this way that are all of the same kind and have been fully answered under other heads does not tend to show hopeless or any error. We agree with him "it is useless to go on", because he does not affect anything.

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### **Answer to Criticisms Contained in Respondent's Brief, Appendix I.**

We think we have fully covered in our brief the point required to answer this criticism, but lest it be thought that because we have not specifically mentioned the appendix in that connection, we have not answered it, we herewith append reference to that part of the testimony which will be a complete answer thereto, namely:

- Curtis, Vol. V, 1550;
- Curtis, Vol. V, 1588;
- Curtis, Vol. V, 1597;
- Curtis, Vol. V, 1624;
- Curtis, Vol. V, 1625;
- Heyneman, Vol. VI, 2039;
- Adamson, Vol. I, 347;

Gray, Vol. VII, 2386;  
Gray, Vol. VII, 2366;  
Klitgard, Vol. VI, 1928;  
Siverson, Vol. IV, 1123.

The foregoing references to the testimony will show conclusively that the same thing is called by different names by the different men and sometimes by the same man. The names contained in the description are not the controlling element in the card but the job numbers are.

We have been unable to give as much time as we would desire to this detail, but consider that we have covered it enough to reach the purpose. Respondent makes the suggestions solely to give the impression that the system is "chaotic", and we have shown that as a rule his alleged errors were not errors at all, but only evidence of his unfairness. Had he consented to check up with us when the matter was fresh, the entire matter would have been plain, but honest inquiry was not his purpose.

NATHAN H. FRANK,  
IRVING H. FRANK.